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*WORLD ECONOMIC PROBLEMS* ·

BUSINESS AND POLITICS IN THE FAR EAST



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# BUSINESS AND POLITICS IN THE FAR EAST

BY

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NEW HAVEN

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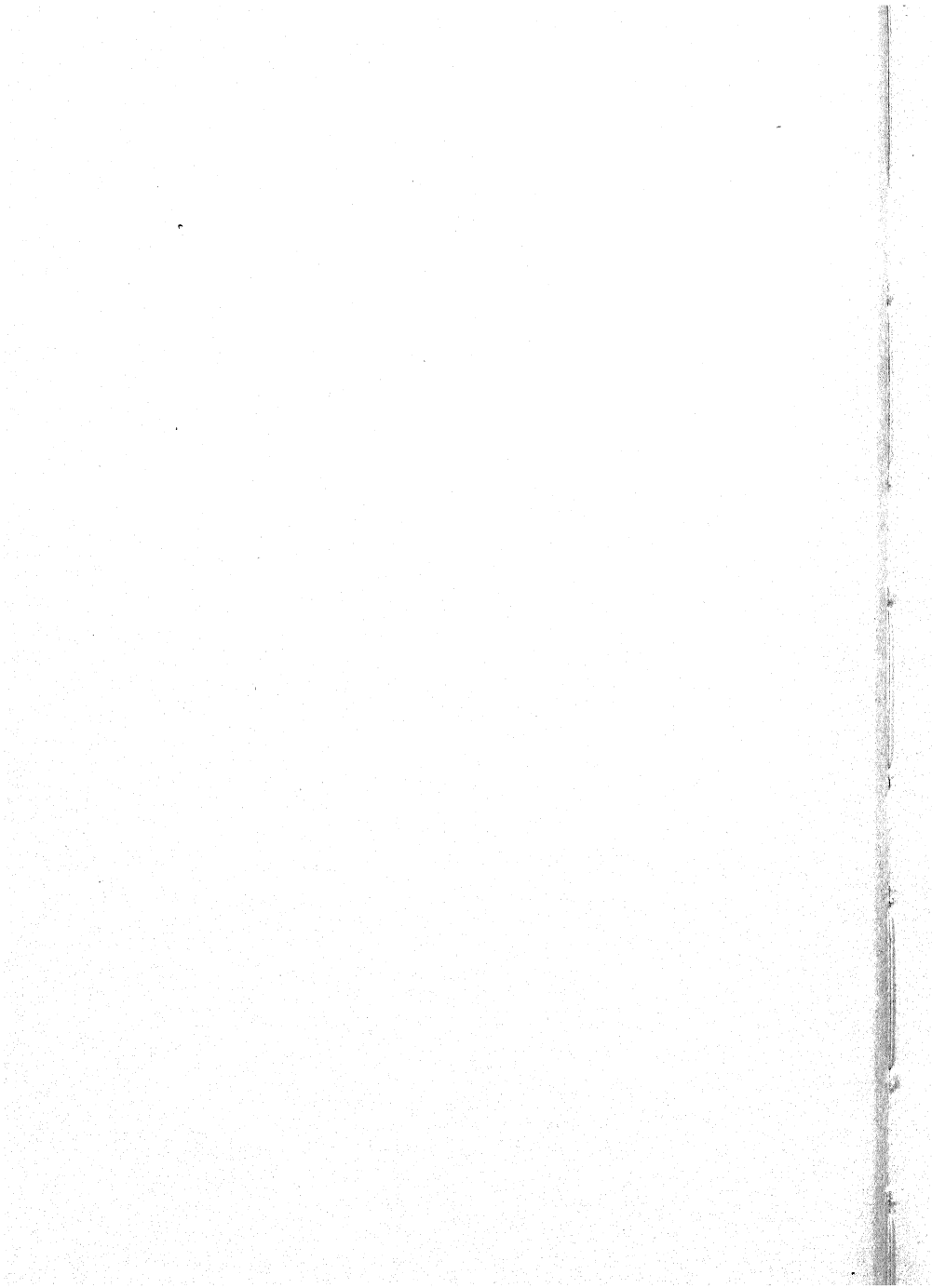
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*TO MY FRIEND*  
ADELAIDE EMERSON HISLOP



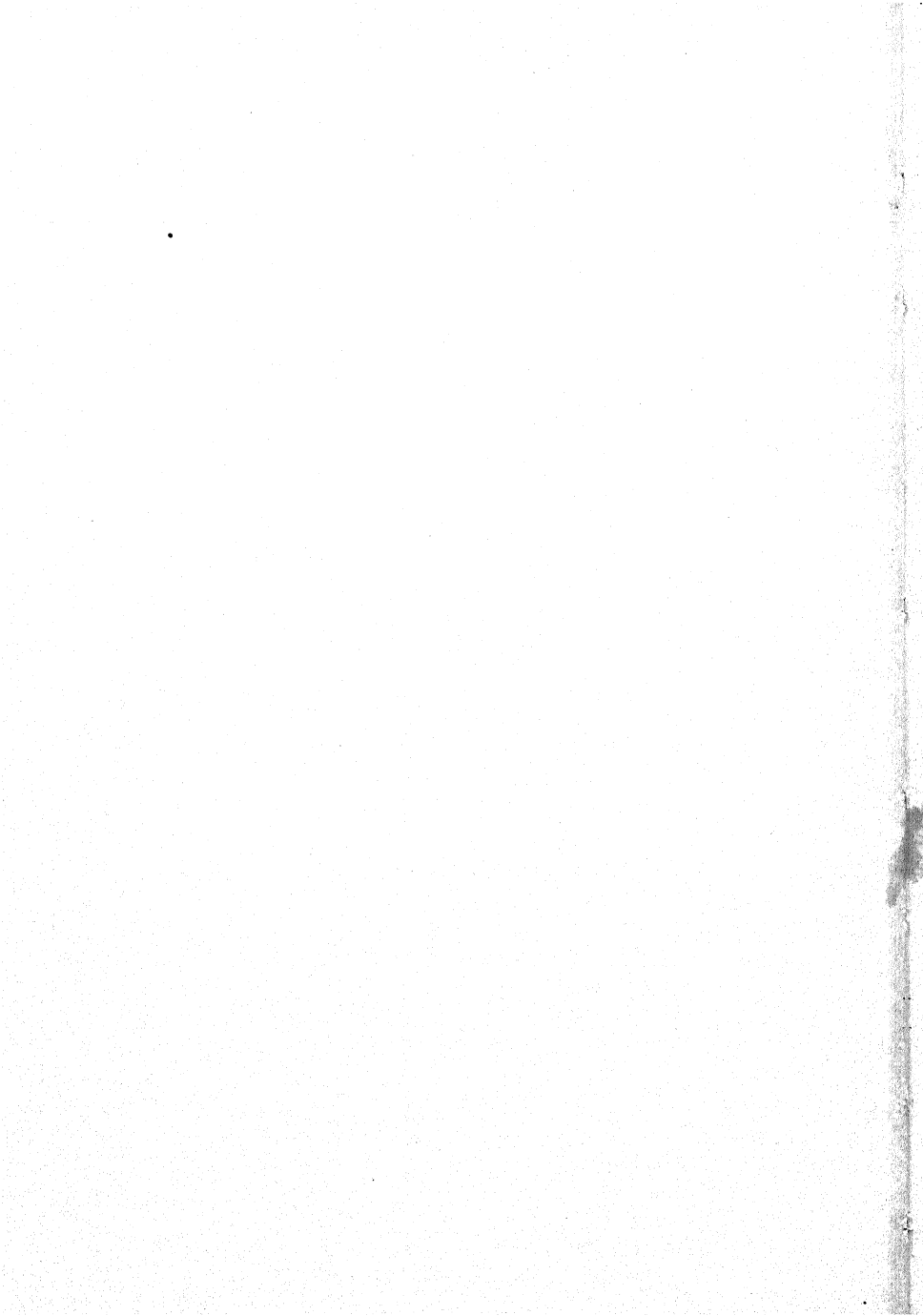
## FOREWORD

THE facts herein set forth were, for the most part, gathered during a recent residence in Japan and China. Such facts were made available to me, and the interpretations which I offer were made possible, only because men who are active in business, public affairs, and education, gave generously of their time and knowledge. There are Chinese, Japanese, and Americans and British long resident in the East, who are trying sympathetically to understand national policies, and striving honestly for an intelligent international polity. There are also a few who are held by the traditional thinking that serves the purposes of politics for power and exaggerated nationalism. On the whole, Japan and China are unusually fortunate in the leadership, unofficial though it may be, of those who are actively seeking such an intelligent and peaceful adjustment of industry and politics as may best secure the vital interests of each national society. The identity of these men is not revealed here lest this necessarily incomplete report of their searching and courageous analyses of the factors involved should be open to misinterpretation. Each would undoubtedly be willing to accept responsibility for his own statements, but it is reasonable to assume that each would naturally prefer to speak for himself instead of through an interpreter. Consequently the interpretation here set forth is a composite for which the author is alone responsible. It is offered as a possible perspective from which to view new episodes which may from time to time arise in the East of Asia.

In the United States the author is indebted, for criticisms and for evaluations, to Mr. Grover Clark, to Mr. Toshi Go of the South Manchuria Railway, and to Mr. Chih Meng of the China Institute. To Professor James T. Shotwell in particular the author owes unending gratitude.

EDITH E. WARE

*Troy, N. Y.,  
February, 1932.*



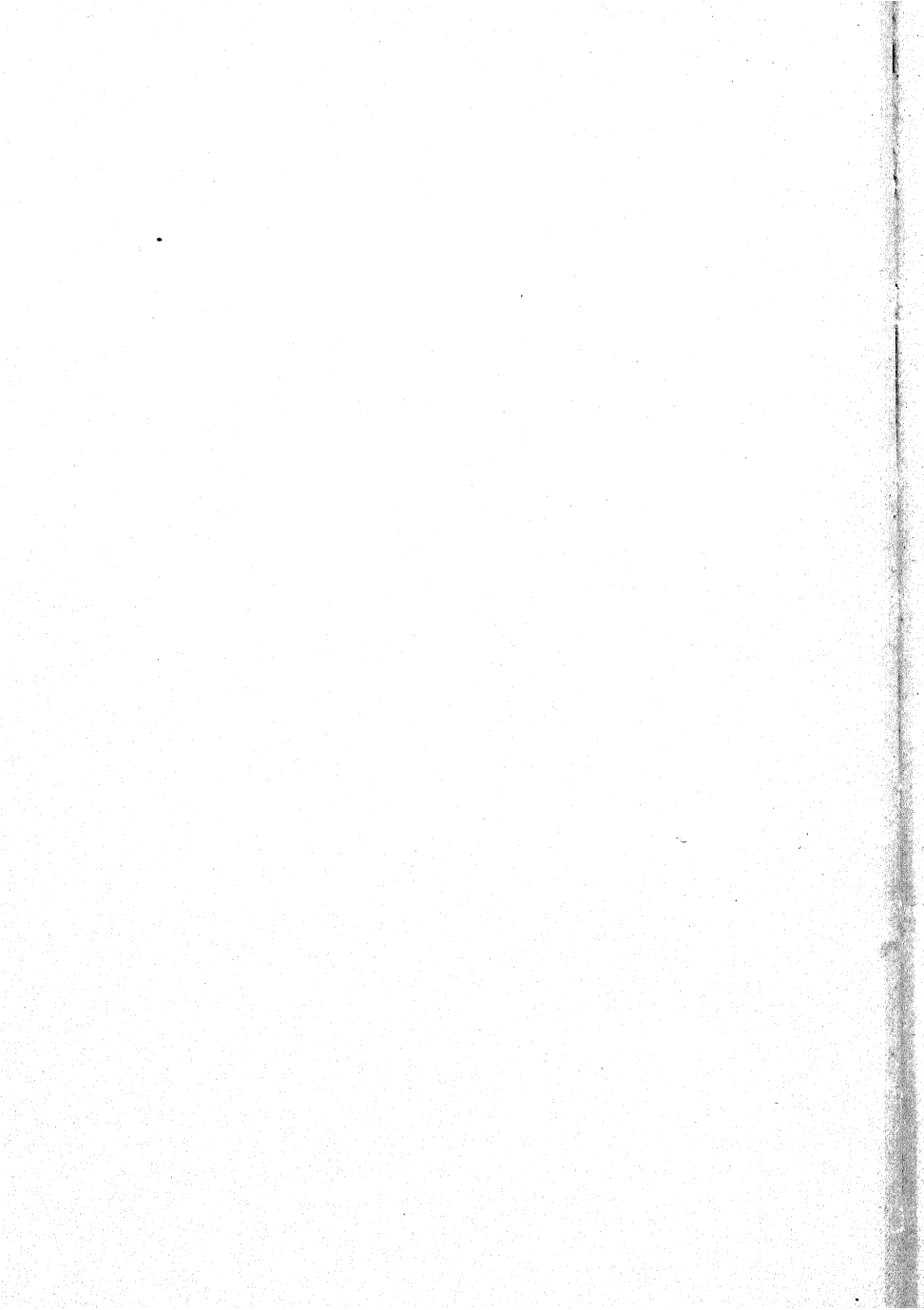
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# I

## INTRODUCTION



## INTRODUCTION

TOO long has the West reveled in the Rudyard Kipling attitude toward the Orient as a world beyond the Pale: "somewhere east of Suez where the best is like the worst, where there ar'n't no Ten Commandments," was a nineteenth-century attitude toward peoples in relation to whom the white man felt superior, and, alas, too frequently, was little bound by codes of honor involving mutual respect. Trade, force, special privilege; markets, raw materials, spheres of interest; spheres of influence, special jurisdiction, economic imperialism; these are all ways of describing the ambitions for wealth and power that have prevailed irrespective of consequences to native peoples, to the cultivation of right relationships, or to the fundamental well-being of human society.

Steamships, airplanes, wireless, travel, and acquaintance have annihilated that East and that West. No longer can the white races consider themselves "humanity par excellence." In a very real sense East and West are meeting. But how? Is the crisis of today a measure of future possibilities? Or, is there an escape from the misunderstandings of the past by developments in the internal life of both occidental and oriental peoples and in that structure of international relations which has been built up since the World War, of which the outstanding symbol has been the League of Nations?

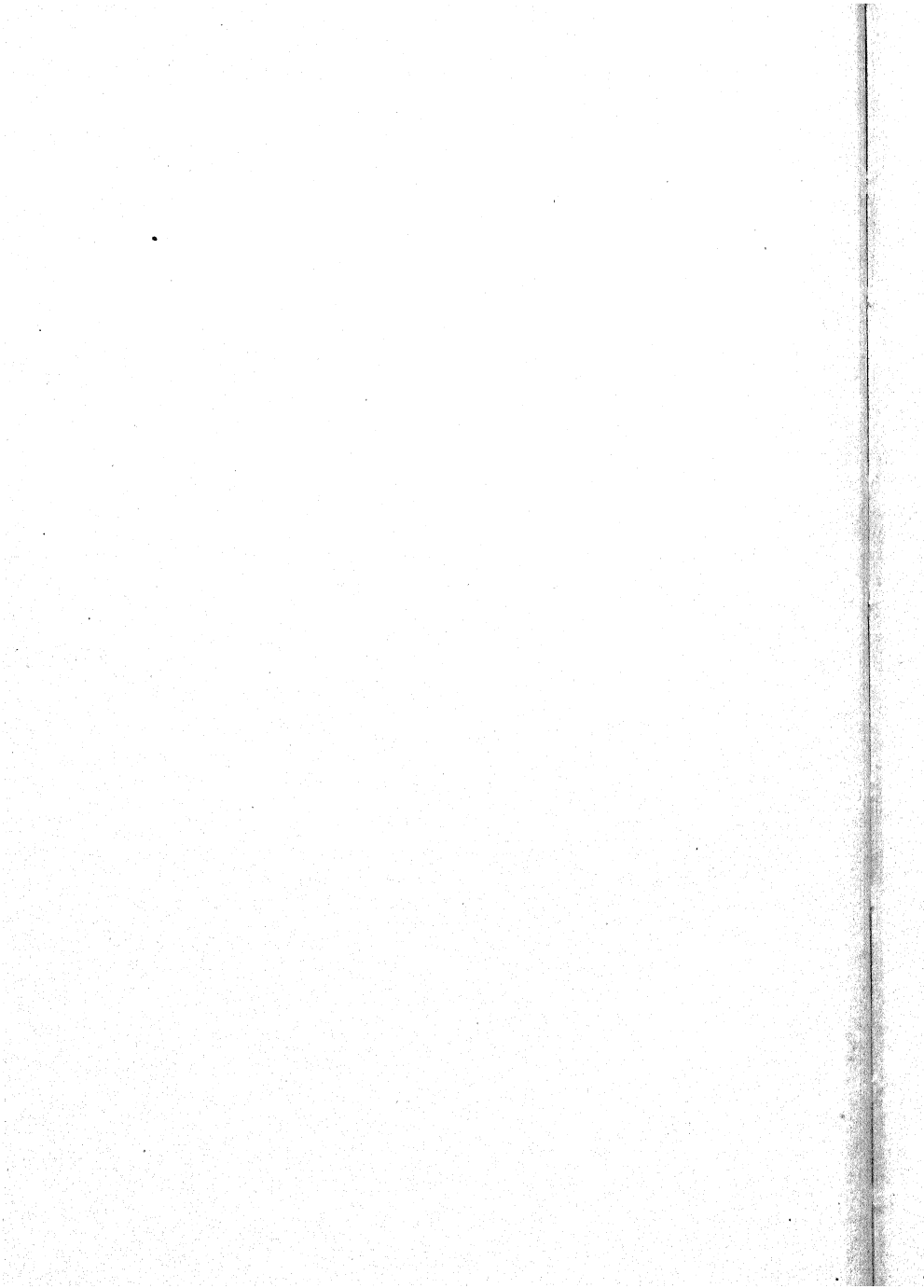
No answer can or should be given to these questions unless something specific and definite is known about conditions in China, and about public opinion in Japan. There is no short cut to the understanding of the intricacies of an international problem. Just as map making involves detailed measurement and devious surveys, similarly the plotting of forces and factors determining the policies of nations demands detailed knowledge of concrete incidents and circumstances, as well as an intimate historical and psychological understanding of the national attitude of mind. In addition, nations, being groups of human beings, must needs have sympathetic approach.

A sincere desire to know real conditions in China, which is now protesting against the special privileges enjoyed by foreigners within her gates, prompted my investigation into the effect of the abolition of extraterritoriality upon foreign business and business contractual relationships. This subject, one seemingly technical, was chosen because, as will be shown, it goes to the heart of the matter of international relationships in China today.

Through these two monographs it is my desire to present to the reader a background which will enable him to view the conflicts in Asia from a perspective that is intelligent and objective. Such an approach to the complex problems of the Orient is necessary to those who would endeavor sympathetically to understand the habitual ways of thinking and acting of two oriental peoples, and to those who would give due weight to developing trends, both in thought and action. Even the effort to understand the factors at work in our changing modern world is a step forward to the ultimate solution of its major problem, which is the realization of a coöperative and peaceful world society.

II

BUSINESS CONTRACTUAL RELATIONSHIPS  
IN CHINA:  
THEIR BEARING UPON THE  
ABOLITION OF EXTRATERRITORIALITY



## CHAPTER I

### THE ATTITUDE OF APPROACH

A VERITABLE Chinese puzzle is China itself. Civil war; famine; political programs; international politics; 450,000,000 potential buyers, a great undeveloped market; mineral wealth as yet unmeasured; such primitive conditions and such poor methods of communication that interior regions practically are more remote from each other and the coast towns than are the seaports from Europe or America; and the struggle throughout so desperate that all other theories of existence or philosophies of life are forgotten. And yet these are but a few of the first impressions.

Where is one to begin if one is to understand "the changing Chinese" or changing conditions in China? Must one attempt to fathom Chinese character and traditional ways, or is it enough to understand the externals of a material civilization? Is it a matter of industrialization, scientific agriculture, irrigation, road building, water supply, and waste disposal? If so, it is a marvelous field for the application of all the practical sciences and an outlet for the surplus capital and energy of the West which is impoverished by overproduction.

Such a solution is vigorously advocated by many practical business men who have interests in China. Their demand is that their home governments coöperate for the maintenance of such conditions in China as shall make this material development possible. Maintenance of such law and order might mean intervention. But why not intervene? From their point of view merely a threat of activity by the gunboats already lying at anchor off Canton or Shanghai or patrolling the Yangtze-kiang might be all that would be necessary. Yet that solution, already advocated by Hallett Abend in *Tortured China*, has not been tried, nor is there any evidence to encourage its advocates to believe that it will be undertaken. Instead, the sudden attempt of the Japanese to intermeddle in Manchuria and Shanghai, in

the winter of 1931 and 1932, has been frowned upon by the whole world.

Meanwhile disintegration, insecurity, even chaos, continue to prevail outside the foreign settlements or regions influenced by them.

It might be far simpler to attempt to understand the character, institutions, and concepts of people on some remote planet than to attempt any adequate comprehension of China and the Chinese today. It would be simpler for the reason that no one would expect people on that remote planet to be like ourselves, nor would one assume that they would have any of our fundamental concepts, such, for example, as the basic political ideas of the Anglo-Saxon world which we call the Bill of Rights. Were one undertaking a study of conditions on another planet, one would have no preconceived notion of what that society would be like; one could, therefore, start with an openness of mind that would make such a study comparatively simple. As it is, in approaching either Japan or China most westerners have very definite concepts of what civilization is, and unfortunately assume that their pattern is the only pattern for society. They have no background for anything else; they have studied the history of Europe and America and their concepts are those based upon the experience of European civilization; they have no other knowledge or experience. Why should they not assume, quite innocently, that their pattern can be the only pattern?

Yet one must abandon conventional thinking and conventional attitudes, if one wishes to understand conditions in China today. He who would attempt to fathom Chinese character, or comprehend changing conditions in China, essays an intricate problem, the subtlety of which will lead him into a psychological analysis of national character, into principles of economics and composite political theories, even into ethnological interpretations of cultural trends. He who would understand China must have the attitude of a psychoanalyst, the imagination to reconstruct a civilization, and the sympathy of a friend.

Whether we will or no, Chinese conditions—economic, political, international—challenge our attention. A wise approach

is necessary, for it is here that East and West are meeting. Moreover, China is on the frontier of Russia; two rival theories for the organization of society, communism and capitalism, may be weighed in the balance by a disintegrating nation struggling for existence.

The immediate problem, the one upon which the Chinese themselves have been making relentless attacks, is extraterritoriality. Their grievance is that they alone of the nations of the world are subject to the humiliation of the distrust involved—Japan in the nineteenth century, and Turkey in the twentieth, having freed themselves from that affront to their sovereignty.

The irony of fate is that originally, according to history, the Chinese of the Celestial Empire conceived themselves to be superior to the whole world; all other people belonged to tributary states. In early times Chinese would have foreigners tried by themselves, in their own courts according to their own customs, because Chinese did not wish their own superior civilization and government contaminated by those whom they considered barbarians.

But after the Opium War in 1842, which followed the defiance by British traders of China's prohibition of the importation of opium, and the consequent destruction of British property by Chinese officials, matters were changed. The humiliated Chinese signed treaties with the British, and soon thereafter with other foreign Powers, which allowed the foreigners to settle in certain "treaty ports" in China. The first were Canton, Amoy, Foochow, Ningpo, and Shanghai. This was but a definitive guaranty that these ports which (with the exception of Shanghai) had been open to foreign traders from time to time since 1518, when the Portuguese traded in or near Amoy, Foochow, and Ningpo, should remain open for all time.

Such an opening of these and other Chinese ports had once been ordered by imperial decree, 1685. But since this was a unilateral arrangement it was not binding; in 1730 Amoy was closed to all but Spaniards; and, finally, in 1757 all ports, except Canton, were again closed. Canton had been continuously visited by foreign merchants from the very first appearance of

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European traders along the coast of China: the Portuguese came in from Macao where they had been established, paying a quitrent, since before the middle of the sixteenth century. During the eighteenth century the French (1728), Dutch (1762), and English established factories there. By 1784 Americans were on good footing through the agency of the British East India Company, which began to trade in Canton in 1638, when they were not welcomed at Macao by the Portuguese from whom they had received permission to trade two years earlier.<sup>1</sup> The British East India Company had a monopoly of British trade there until 1834.

The foreign traders lived in factories which were rented from Chinese merchants, who, thirteen in number, formed a "Co-Hong," which had—by imperial grant—the monopoly of trade with foreigners in Canton. They are a Chinese variant of the "guild merchant" arrangements of the Middle Ages in western Europe. Each foreign merchant was allotted to a particular member of the Co-Hong, through whom alone he could buy and sell; and the members of the Co-Hong must be security for the foreigners who traded through them. Later on the obverse side of the picture is interesting: after 1842, when foreigners seemed to be in control of Chinese international trade, when foreign import-export houses and banks were established, they each employed a Chinese called a "comprador," who in turn guaranteed the reliability of those Chinese who traded with the foreigners.

In 1842 the British acquired the island of Hongkong. This became a base for British trade comparable to the Portuguese Macao, for which they (the Portuguese) refused to pay rent and from which they banished the Chinese customhouse in 1849. Within the treaty ports open in 1842 and since, definite areas have been set aside for the use of foreigners, where they have lived under their own laws. These areas were called concessions; sometimes they were foreign colonies, sometimes simply leased areas. Shameen is a very interesting example. Originally this was a marshy island in the Pearl River off Canton.

1. These dates may be open to question. I have accepted the dates of the Chinese account as given in *The China Year Book*, 1931.

In 1861 it was leased to French and British; one end is now a crown lease to the British sovereign, the other the French Concession. For these a quitrent is paid to the Chinese. Around the marsh foreigners built a wall—a jetty; they drained and filled in the area, planted trees, and built storehouses, banks, and dwellings. Today a park with tennis courts, well-paved streets, and comfortable European dwellings comprise the foreign settlements of Canton; they are guarded by foreign gunboats—American, British, French, Japanese, and Portuguese—lying at anchor in the river. Among the treaties of the early forties, there was one between the United States and China which is typical of others.<sup>2</sup> In this it was arranged that if Chinese citizens were guilty of any criminal acts toward citizens of the United States, they should be arrested and punished according to the laws of China; reciprocally, if citizens of the United States should commit crimes in China, the same should be tried and punished by the consul, or other public functionary of his own nation properly authorized, according to his own national laws. This was so arranged, it is explained, because Chinese methods of treatment of criminals, and laws covering the same, were very different from what foreigners were accustomed to at home. To provide the machinery for this system of extra-territorial jurisdiction, the United States Government created a Consular Court (of which the consul or consul-general is judge) in each consular district; and in 1906 Congress created the United States Court for China, a court of original and appellate jurisdiction over all American citizens in China. This court was opened in Shanghai in 1907. Great Britain, France, and other nations, whose citizens were interested in trade in China, had similar treaties and created similar consular courts; the British also have a special Court for China, with appellate jurisdiction, located in Shanghai.

From time to time treaty ports in China were opened to foreign residents until they totaled sixty-nine, and eleven ports, voluntarily opened by the Chinese, called trade marts.<sup>3</sup> In treaty

2. This is the famous treaty made by Caleb Cushing, signed at Wanghia, July 3, 1844. G. W. Keeton, *The Development of Extra-territoriality in China*, I, 177-187.

3. This is the statement authorized by the United States Department of Com-

ports foreigners have been permitted to reside, lease land in perpetuity, and set up business establishments. In the voluntary ports or trade marts resident foreigners may lease property for a restricted number of years, usually thirty. Only within these designated settlements may foreigners live and hold property even on lease. Exception, however, has been made from time to time in the case of missionaries who have gone into the interior: they have been given special permission to reside there and to hold property for their schools, churches, and dwellings.<sup>4</sup>

Within the concessions, colonies, or compounds where foreigners are allowed to reside, they live under their own law—law of a regulatory local character, or the law of the nation which holds the concession. If an American, for instance, lives in a French concession, he lives under French law; if in a Japanese concession, he lives under Japanese law; if in British territory, he is under British law. American concession areas have been relinquished in accordance with American declarations in favor of the territorial integrity of China.

Extraterritorial rights and privileges of any foreigner apply irrespective of the nationality of the concession areas; they apply to both civil and criminal cases, and are within the criminal or civil law of the foreigner's own nation.

This twofold arrangement—concession areas in which foreigners live under their own civil law and regulation, and consular courts which function under foreign law instead of under Chinese law—seems to the Chinese to give to the foreigners special privileges and advantages in China. It is the old issue of *imperium in imperio*.

The National Government of China, also called the Nanking Government, has, throughout its existence, contended vigorously and incessantly for the abolition of the special privileges of

merce in China, "Trade Promotion Series," No. 38 (published 1926). *The China Year Book* (1931), p. 272, lists forty-seven treaty ports, trade marts, and customs stations opened by treaties; in addition there are three which were opened by imperial decree in 1898. Since 1903, thirty-one towns or cities, including two in Tibet, have been opened to trade. (Earlier, in 1860, Kashgar was opened to Russian trade, and in 1898 Woosung was declared open.)

4. The extraterritoriality enjoyed by the missionaries in the interior of China is described by Nathaniel Peffer in *China, the Collapse of a Civilization*, pp. 71-74. For the amount of property held by missionaries in China, see Grover Clark, *Economic Rivalries in China*, pp. 48 ff.

foreigners in China, for the abrogation of the unequal terms of the treaties made after 1842, and for the abolition of extraterritoriality. In their speech and also in their thinking, Chinese include them all in the term "abolition of extraterritoriality." This objective has been held to be essential since the beginning of the Republic; abolition of foreign rule was its slogan: first, the abolition of Manchu rule; secondly, the abolition of foreign privilege. The first was accomplished with the establishment of the Republic, in 1912; the second remains a challenge to the present national government. Nanking's political merit, or the political merit of any government in China today, will be measured in large part by its successful approach to this objective. Since this is the fundamental issue they have raised in international relations, it seems fitting, perhaps almost necessary, to inquire what may be the effect of the changes demanded upon the status of foreigners and foreign business in China, or, more particularly, upon their business contractual relationships, all of which the old order was assumed to safeguard.

## CHAPTER II

### WESTERN LAW AND CHINESE PRACTICE

AS early as 1902 and 1903, even before the establishment of the Republic, the Chinese protested against the stigma of extraterritoriality. They were told by the Powers that as soon as they had laws and courts like those of the West, then the Powers might withdraw the special consular jurisdiction maintained for the protection of their citizens. As a result of these first negotiations the United States, Great Britain, and Japan agreed by treaty that they "were prepared to relinquish extra-territorial rights when satisfied that the state of Chinese laws, the arrangement for their administration, and other considerations warrant" such action.<sup>1</sup> At the Fourth Plenary Session of the Washington Conference, 1922, a resolution was adopted in which the Powers pledged themselves

to inquire into the present practice of extra-territorial jurisdiction in China, and into the laws and judicial system and the methods of judicial administration of China, with a view to reporting to the Governments of the several Powers above named findings of fact in regard to these matters, and their recommendations as to such means as they find suitable to improve the existing conditions of administration of justice in China, and to assist the further efforts of the Chinese Government to effect such legislative and judicial reforms as would warrant the several Powers in relinquishing, either progressively or otherwise, their respective rights of extra-territoriality.<sup>2</sup>

A commission for the adjustment of details which met in Peking from January to May, 1926, failed to arrive at any definite arrangement. This failure is, in part, attributed to the very unstable character of the republican government then existing in China: the Peking Government was practically defunct (its collapse was recognized in June, 1926); and the Chinese Re-

1. John V. A. MacMurray, *Treaties and Agreements Concerning China, 1894-1919*, II, 374, 414, 431, 743.

2. *Conference on the Limitation of Armament, Washington, 1922, Proceedings*, p. 1644.

public in Canton,<sup>3</sup> which called itself the Nationalist Government, had not extended its control very far either to the north or to the west, where provincial Tuchuns, who were virtually military dictators, had extensive jurisdiction.

Throughout the various vicissitudes of government in republican China a Law Codification Commission has continued to work. In collaboration with several Ministries of Justice it has been sitting since 1914; it has been reorganized twice; Dr. Wang Chung-hui—delegate to the Washington Conference, 1921; elected Judge of the Permanent Court of International Justice in 1930; President of the Judicial Yuan, October, 1928—April, 1931; and Minister of Justice under the Nanking Government until April, 1931<sup>4</sup>—has from time to time been its president or chairman. Laws promulgated by the former Peking Government were published by that Government in 1922; four supplements appeared, 1924–27. Since 1927 laws promulgated by the National Government in Nanking have been published and translated. The brief record of accomplishment given in *The China Year Book*, 1929–30, bespeaks an industry untiring and intelligent.<sup>5</sup> The present code has been patterned on continental European codes; especially French and German; the new Chinese Criminal Code, in particular, is copied from the West. Chinese law, especially the Manchu Codes, were included whenever applicable to contemporary conditions. Customary regulations were given due consideration. Regulations suited to modern business and industry, and industrialized labor conditions, instituted in imitation of those of European nations, in particular, have been embodied. Wherever old Chinese codes and customs were applicable, they were followed; new penalties, however, were often substituted for old. The whole is an intricate composite which is designed to meet modern Chinese conditions with modernized Chinese law.

3. This government in Canton is sometimes spoken of as the "Soviet Republic of China," not by Chinese, but by westerners, who would thereby indicate the character of its organization in distinction from the usually accepted concepts of republican government. This is done by Holcombe in his *Chinese Revolution*, chap. vi.

4. The resignation of Dr. Wang Chung-hui was not accepted by the Nanking Government. He was appointed to the same positions in the reorganized Chinese Government of December 28, 1931.

5. P. 771.

The process of imitation of western law, whenever it was deemed necessary, has not been as simple as it sounds; in some instances it has been nearly impossible, because the Chinese language has not the characters with which to express foreign legal concepts. Since, however, the Japanese had already achieved the westernization of their law, Chinese scholars studied the characters used by them to express the foreign ideas; this was of assistance because Japanese written characters were originally borrowed from the Chinese. Thus, using the Japanese translation as a key, the Chinese have created their present code of western law. This, in turn, has been translated into English, the second language of China, to be made available to the foreigners. A comparison of the English translation of the Chinese Code with the original laws, or English translations of the same, revealed the astonishing fact that in the process of translation into Chinese the real ideas of the original statutes had often been lost. The obvious reason, that the Chinese have no language for expressing concepts which they themselves have not evolved, is indicative of something very fundamental. It is clear that in this compilation of laws—including many borrowed regulations, which are the crystallization of a foreign experience—two civilizations are meeting; they have no common language for as yet they have no common experience. When this fact is comprehended, immediately the question arises: Can borrowed laws ever work satisfactorily in this alien environment?

Naturally, the question is as yet unanswered; meanwhile, the code making continues. The sincerest efforts are being made by scholars, both Chinese and English, who know the Chinese language, to get a workable body of law. The result, in the abstract, is very creditable considering that the amount that is borrowed or recently promulgated is not evolved entirely out of their own group experience. In this instance law is anticipating a civilization, an inversion of the usual practice: for back of the newly adopted code there has been no Chinese definition of fundamental principles, such as were embodied in the Bill of Rights, which were antecedent to legislation in the modern Anglo-Saxon world.

The Nanking Government was created by a group of Kuomintang leaders (September 15, 1927) who expelled the communists and appointed an Executive Committee. The Government was controlled by a Standing Committee; Chiang Kai-shek, who had earlier denounced the communist government in Hankow, formerly allied himself with the Nanking group, and became its effective military leader. The Standing Committee at Nanking appointed five ministers who inaugurated the national administration; this continued under the presidency of Chiang Kai-shek from 1928 until December, 1931. The National Government derives its mandate from the Central Executive Committee and Central Supervisory Committee elected by the National Congress of Kuomintang delegates. This government by committees of a political party is no more indigenous to China than the westernized legal code, or system, that is being adopted. Nor is there a generally accepted theory, or common consciousness back of the present Kuomintang party. That party in China was built on a foreign model, implanted on Chinese society, and is, therefore, as alien as western codes of law. Moreover, the party government inspired by the Russian model, and the legal system derived from Europe, come from systems of society which differ fundamentally from each other. In reality two different organizations of society—western European and Soviet Russian—are being imposed upon the native Chinese.

Idealists may dream that the two alien conflicting theories of government will be harmonized with the Chinese; and that their resultant organization of society in China will so successfully combine the best of the East and the West as to become a model for all nations. This, they hope, in conformity with the historic patriotism of Sun Yat-sen, will restore China to a position of leadership among nations. There may be a basis for such hope in the fact that units of local government within China itself are suited to the semisoviet political organization that the National Government of Nanking would develop: the former district government under a magistrate, for example, was very much influenced by the gentry of the community who really acted as a supervisory committee. For this reason mod-

ern committee government fits into the older local government.<sup>6</sup> The disintegration of society in China throughout the last decade—a disintegration which is political, economic, and social—makes almost any ideal reorganization of society seem utopian. Nevertheless, intelligent Chinese leaders have been attempting to build within China a new order that shall be essentially Chinese, its roots in the past, its branches extending into the international world which surrounds them.

In practice the Nanking Government have been accepting in their legal code detailed regulations borrowed from the West or modeled on western practice; they have consciously built their code to meet the needs of foreigners within their borders in order to satisfy the western Powers; to these they have added new rules for the regulation of their own society, especially in those particulars in which it is being westernized and industrialized. All this they have incorporated into a systematized collection of their old laws and customs. Nevertheless, the new codes give clear evidence of western influence. In former times the family group, from the eldest grandparent to the youngest grandchild or great-grandchild, was a unit of society both social and economic; but it was more, it was a unit of government

6. How much is borrowed, how much is indigenous, in the present national government of China is a matter upon which experts differ. Mr. Grover Clark, for instance, who knows Chinese local organization and Chinese history as sympathetically as any modern Chinese, insists that the Kuomintang organization goes back to old Chinese forms of guild organization even more than to the Russian models—in spite of the fact that names of parts of the organization are derived from Russian sources. Mr. Clark contends that the relation of the Central Executive Committee to the rest of the party organization, and of the Kuomintang, as such, to the non-Kuomintang population, parallels quite closely the relation of the emperor and his immediate associates to the rest of the officials, and the relation of the officials to the people as a whole, under the old Chinese system. He says: "The republican forms borrowed in 1912 were fundamentally alien—the committee forms and the dictatorship by the party are fundamentally in line with old Chinese practice. This, to my mind, is the principal reason why the republican forms failed completely while the newer forms give some signs of being workable." There are, on the other hand, prominent, influential Chinese known to the author, who are not as convinced as is Mr. Grover Clark that the Kuomintang dictatorship is well suited to Chinese ways. Whether Professors Holcombe and Corwin are right that the framework of government under Nanking has been imported as were republican forms under the republican government in Peking or whether Mr. Clark is right, there is, notwithstanding, one fundamental fact of real importance today: it is that the Chinese leaders, bankers, teachers, scholars, are not so bent on imitating the West as they are on creating a modern, virile, Chinese China.

for the regulation of conduct as well. Equality or independence of members was undreamed of, equality of the sexes in inheritance or division of inheritance was unknown. New ideals of individual liberty in a social sense, and individual property rights, both of which are contrary to all Chinese tradition, are provided for in the new codes. The migration of individuals or parts of families to industrial centers and their employment in mechanized factories have created new circumstances for which there is no customary regulation or protection. These changing conditions which have come about as China has become industrialized on western lines have necessitated regulations such as characterize similar conditions in the West. There were no *mores* to care for the situation. To the present, the newly created code, designed to meet non-Chinese conditions, remains for the most part something quite external to inherited Chinese conceptions of relationships, and a unification of the two types of conception, occidental and oriental, seems at present far distant.

The effort of reformers to impose the framework of the government of the West, including its legal system, has been characteristic of the Chinese Republic from its inception. The constitution of 1912 and that of 1923, in spite of a slight modification of the latter to fit it to Chinese customary government, failed in part because the young foreign-trained Chinese, who formulated them, knew the constitutions and laws of the West, and had forgotten, or perhaps—because they were educated in foreign lands—did not know well the minds and age-old ideas and practices of their own people. Their efforts failed; they seemed not to be suited to Chinese conditions. In view of the numerous experiences and failures since China became a republic (1912), people may well wonder if the present attempt at a western codification of law and western judicial practice will succeed. If it does succeed, will the imposition of a legal system hasten the westernization of China and determine the character of its future civilization? Or, will the welding of foreign law and local practice create something new; something more adequate than either for the re-creation of Chinese civilization? Interesting as such speculations are, time alone can

give the answer. The student of public affairs, at any rate, must endeavor to comprehend present circumstances and practices under the new laws.

If the concepts of the West are to be engrafted upon Chinese society and government in the future, then, certainly, fundamental principles inherently Chinese should be consciously defined. Expediency, which has meant the adoption, in part, of a ready-made legal system for the accomplishment of an immediate purpose—the abolition of extraterritoriality—can hardly be adequate to the building of a nation, or its national law.

If there are such principles discoverable they must be found in the recent history and present practices of China. They will be ascertained by inferences from a somewhat detailed examination of facts.

We may begin by recalling the major objectives of the revolution that has been taking place in China within the last generation. With the purpose of preserving China for the Chinese, the two primary objectives were freedom from Manchu rule and freedom from foreign domination. The former was accomplished in 1912 with the setting up of the First Republic after the overthrow of the Ch'ing dynasty. The latter is being gradually accomplished. Foreign domination has been steadily lessened until it now comprises only special privileges and exemptions within special areas under foreign control. In order to attain full recognition of their sovereignty the Chinese are now demanding surrender of the special areas—crown leases, colonies, concessions—within which foreigners live under their own police protection and regulation, and where foreigners, in control, levy taxes on foreigners and Chinese alike. They also demand the nullification of the extraordinary jurisdiction whereby foreigners in China are protected by their own laws in their own courts, known as extraterritoriality. These objectives are based upon the desire of modern Chinese that China shall be treated as a nation among nations; they embody the specific conditions the Chinese have conceived to be essential to the realization of Chinese sovereignty.

This proposed change is objected to by the foreigners concerned. Champions of foreign business, especially the legal-

mind, argue that such legal reform as has been instituted to meet foreign demands, and, thus, to enable Chinese law and administration to replace foreign legal jurisdiction in China, is merely a collection of rules, and that the whole lacks the guarantees for the security of life, liberty, and property which are essential from their western point of view. The westerner frankly prefers to live under his own laws administered by his own nationals; even another European legal system holds uncertainty and would fail to satisfy him. Naturally, therefore, he prefers his own laws and courts to those which a state in the process of revolution may be able to establish. It is hard, furthermore, for the occidental to have the patience or the confidence which the Chinese have in the ultimate success of their revolutionary government; the foreign business man wants security as he knows it, and he wants it now.

If we would deal fairly with this point of view we should ask if there is any political philosophy inherently Chinese that can give backing to their attempt to create a judicial system adequate for the needs of foreigners within their borders. In such case we must look to the teachings of Sun Yat-sen which are embodied in his writings—*The Three Principles of the People*, and *The Five Power Constitution*, in particular—and which have become the fundamental ideas of the present stage of the revolution. These the business man may not comprehend, for the framework of the Chinese Government is not like any with which he is familiar. Moreover, political conceptions and practices essentially Chinese are so blended with borrowed ideas, which we call the Political Science of the West, that the westerner finds it all very strange: it is alien; it is not his way; he does not trust it.

A supreme party, the Kuomintang, whose Central Executive Committee directs the party, and whose Central Political Council supervises the government and interprets the law, is really the government of China; various councils and committees like "a system of interlocking directorates dominated by a narrow oligarchy of party politicians and generals" are at present directing the National Government of the Republic of China. This is to continue for a so-called "Period of Tutelage" or until,

through education deliberately undertaken, a sufficient number of men shall be trained for positions of leadership, and until the education of the people shall have created an intelligent citizenry who shall be able to function in a self-governing state. As soon as that shall have proceeded far enough for the establishment of local and provincial governments under capable leaders chosen by the particularly trained citizens, then it will be possible to say that the Period of Tutelage is over; and a central government will be established according to the principles defined by Sun Yat-sen in his *Five Power Constitution*.<sup>7</sup> All this seems inadequate to practical business men who are interested in the maintenance of conditions just like those of the West.

Moreover, the existence of a State Council, and Five Yuans, as distinct from the committees and councils already mentioned, yet created by one of them, the Central Executive Committee of the party, makes it all seem involved to the westerner, who has his own ideas of what republicanism and democracy are and should be. The Five Yuans are the Executive Yuan, the Legislative Yuan, the Judicial Yuan—like the conventional departments of government at the West—and added to these the Examination Yuan and the Control Yuan—which are derived from old Chinese ideas and practices. The Examination Yuan is to provide for a permanent civil service as a department of government; this in turn shall provide for a modern civil-service examination system and designate persons qualified for office. The Control Yuan, which may impeach officers and audit accounts, preserves the old Chinese practice of a Board of Censors within the government whose duty it is to keep all departments to an accounting. But when the chairmen of the yuans and heads of ministries are members of the State Council, or even of the Legislative Yuan on occasion, when the heads of ministries and chairmen of commissions are members of the Executive Yuan, it appears to the foreigner that the Five Power Constitution is quite different from the executive, legislative, and judicial departments of government as he knows them at

7. Holcombe, *The Chinese Revolution*, chap. ix, describes in detail the Period of Tutelage.

home. This overlapping of personnel and departments is quite different from the practice of separation of the powers in government at home which he conceives to be fundamental to all government.

The program for the political education of those who are to become officials, and for the political education of the citizens who are ultimately to choose their officials from those trained and qualified to hold office, is good in theory; the ideal that government shall not be the tool of business but shall so direct capital, modernize industry, and develop the natural resources of the country according to the scientific advice of experts that the economic rehabilitation of China shall be achieved, is one worthy respect. But when these are held as preliminary to the return of China to her place as leader and teacher of other nations, which she has always conceived to be her destiny, then it all seems very vague and visionary to the foreigner content with the *status quo ante*. In fact, fruition of such revolutionary hopes seems to be too remote to merit consideration in the everyday world of business affairs; especially since the present government, the Nanking Government, in the Republic of China has been struggling for existence from its beginning. (For a time it was maintained with the aid of the strong hand of Chiang Kai-shek.) Furthermore, the worship of Sun Yat-sen's spirit and the adoration of his ideas as law and gospel, give the "hard-boiled" business man little confidence that something is being created in the Chinese mind which is superior to practice, to which practice must conform, something comparable to the western concept of law, positive and supreme, to which state and society must conform. A political system in the making might win more confidence if the military stage were passed, and if the experimental government at Nanking were sufficiently secure to put into execution the educational programs throughout the local units and administrative districts. Education is undoubtedly necessary during a transitional period—the Period of Tutelage—before revolution and evolution shall have reached maturity.

Meanwhile, those who would attempt to understand the problem of extraterritoriality, especially in regard to business

contractual relationships, may well ask: What will be the fate of the new code, and the practices under it, especially when both are being accepted by a government that is, in itself, new, and in the throes of revolutions of one sort or another? Can a legal system set up under such circumstances be adequate to either Chinese or foreign needs until it is well fitted into the newly established government? Furthermore, can it replace consular jurisdiction for the foreigner? Or will it, in the process of time, create new conditions which, in turn, may contribute to the transitional period in China by facilitating contacts with the West, with the result that the government, when established under the Five Power Constitution, shall be as adequate to the reconstruction of China as if the remodeling had been done along purely western lines?

It is necessary to turn to an investigation of the *status quo* for our answers. By describing what is really happening under the new code, and by isolating the successful business practices in China today, it may be possible to ascertain how much these impinge upon extraterritoriality. From such observation it may, also, be possible to ascertain how essential extraterritoriality is to the foreigners and how disastrous to the Chinese; how disastrous its abolition would be to the foreigner and how advantageous to the Chinese.

It is natural that the establishment of the new system should be comparatively easy on the coast, because there the Chinese have long had knowledge of the foreigner and experienced his strange ideas and alien practices; moreover, some Chinese are themselves experienced in foreign ways. But the establishment of the new system in the interior will be very difficult, for here the foreigner and foreign ways are little known; the new legal system will be an entirely new experience, and the result may be quite alien to western practice. Again, we may ask, if the practice of the courts even in the coastal areas is far from definite, what will be the effect upon business relationships of a much more modified practice in the hinterland? The answer to this as to the other questions must be sought in a description of the relationships now practiced by successful foreign business in China. Before attempting an evaluation of the probabilities

in general, or probabilities in the interior in particular, it is first necessary to understand the working of the new system in the coastal areas where the foreigner is now resident.

In order to safeguard justice for the non-Chinese and thus meet the conditions required of them by the foreign Powers looking to the abolition of extraterritoriality, the Chinese Government has done more than complete a code. Special provision is to be made, in the larger cities, for the trial of foreigners who may be resident there after extraordinary consular jurisdiction is abolished. Plans recounted to me by Minister Wang Chung-hui, in the winter of 1931, provide that ordinary courts are to have a special bench, with an especially qualified judge presiding, for the trial of foreigners. In case of appeal there shall be three judges; the last appeal shall be to a Supreme Court in Nanking which shall be presided over by five judges. This Supreme Court together with an Administrative Court, a Court on Disciplinary Treatment of Officials, and the Ministry of Justice are all to be directly under the control of the Judicial Yuan, one of the powers in the Five Power Constitution. In order to insure adequate administration of the new courts which are being established throughout the provinces as fast as possible, Nanking is training lawyers for judgeships which are to administer the new code: during 1931, 189 trained judges were to be graduated; previous to 1931 there were 150 administering the new laws. The more important courts in the seaports where foreigners are most numerous are to be presided over by foreign-trained Chinese. Herein is an interesting example of a project for fulfilling the educational program during the Period of Tutelage. Moreover, it is also suggested that this program of education shall include the employment of foreign experts to serve in an advisory capacity until the Chinese shall become experienced.

No practical precautions seem to have been taken for fair or reasonable treatment between arrest and trial. Champions of China's legal reforms argue that the codes provide for prompt hearings after arrest. Here is an illustration of precisely the point which we have been trying to make, namely that the letter of the law is one thing, and that the practice is quite an-

other. On technical points the procurators have frequently postponed trials. "Torture of crime suspects in efforts to force them to confess" could be the headline reporting an investigation of police practices in various cities in China as well as in New York.<sup>8</sup>

What result the rivalry between the Nanking and Canton factions during 1931 may have upon the personnel of leadership and consequently upon the program for courts and judges is, of course, unknowable. That struggle has seemed chiefly a matter of personalities. Under the new personnel of government, which contains disciples of Sun Yat-sen, governmental policies already inaugurated may be continued in order to put reality into his ideals.

Plans for the future, however, are less our concern than facts of the present. There is a new code, but that, obviously, is only part of the story. The law must be administered by Chinese judges. Even judges trained for the special responsibility of administering courts under the new law have naturally an inheritance of ideas from their Chinese environment. Moreover, they must function in a Chinese world. It is necessary, therefore, at the very beginning to realize that law in China today has not been the crystallization of Chinese experience or opinion, as has been true of the growth of common law in the Anglo-Saxon world. Formerly, Chinese codes of law were codes of punishment for certain acts which were laid down for their territories by dukes and provincial lords. Thus, definite law was considered barbarous and associated with punishment; decisions of magistrates were determined by what was meet and expedient. There was never any conception of enforcing law which was superior to the moral agency of the magistrate. Moreover, it must be remembered that former magistrates and officials were literary men whose conception of their own function in the community was "the cultivation of right relation-

8. Headline, New York *Herald-Tribune*, August 11, 1931, announcing the content of the Wickersham Report on the Third Degree. "Punch in the face, slaps in the jaw, whipping, kicking, hitting, choking, . . . are administered to prisoners who are thought to be concealing information as to crime. . . ." This could be applied to Chinese lawlessness in law enforcement, and probably for similar reasons—acquiescence and even encouragement from officials. Sometimes it is merely due to the brutality of the police.

ships"; their judgment according to moral values took the place of law. To quote Wang Chung-hui's phrase, Chinese legal conceptions are based on the assumption that decisions, both civil and criminal, should be "on the basis of the equities of the situation rather than on the technicalities of the law." When the magistrate was brought to a civil case, he looked on himself, and the parties concerned looked on him, as an arbitrator rather than as a judge in the western sense.

Respectable people didn't go to law; law was only for the punishment of certain definite offenders. The practice of test cases for the definition of principle and the setting of precedent was, therefore, until recently, absolutely unheard of. Even now, although a case or decision may become a precedent, the deliberate bringing of a test case is beyond their horizon. Law as the epitome of community experience, law positive and superior, regulatory in its character, law the tool for setting precedent or standard, such law was formerly unknown, and is now seldom understood; certainly, it is not generally accepted. Law to the Chinese is merely a tool for the use of some agent in government.

Let us illustrate the practice in regard to business relations in particular: Suppose a customer has failed to meet his obligations to a creditor. If he is a friend of the creditor—which is probably the reason why he does business with that particular firm or individual—the creditor will not press for collection by legal process; this would be looked upon as punishment, and it would mean the end of the friendship and of future business. Instead, the firm will have patience and help the debtor meet his payments. Both will come out fairly well. When, on the other hand, such a case is taken to court it is difficult to get clear-cut decisions. The bringing of a case against a man puts a stigma upon him, for the Chinese cannot conceive of law as impersonal; they cannot think of any human relationship as impersonal. Moreover, in older Chinese thinking "law never applied to a gentleman."<sup>9</sup> The surest way not to get a settlement

9. This is in conformity with the Confucian ideal: the government of men versus the government of law, which is fundamental to the struggle between the West and China. When you tamper with the law you touch the whole social structure of the Chinese.

is to appeal to the court, such an appeal "would create the presumption, in the minds of the Chinese, that the appellant is trying to force an essentially unfair settlement."<sup>10</sup> Furthermore, it never seems to a Chinese possible that all the wrong should be on one side. Formerly, therefore, if a case went definitely against one party, it might happen that the loser would be given a dinner in order to save him from feeling the onus of the decision. Again, it may happen that the judge will not give a decision at all but determine upon a compromise, as in the case of a man brought to a magistrate because he had not paid thirteen dollars rent he owed his landlord. The judge sent the parties away to adjust the matter. When they returned without settlement, he commanded the renter to pay seven dollars and fifty cents. To the landlord he said: "The man owes you, I know, but you don't need it and he does; divide with him; I can understand the renter, I am one myself."

Now that the Chinese are adopting western law, it is pertinent to ask if these former concepts and practices, just illustrated, have undergone any modification? The answer may be found in another illustration: the new factory law and its administration in the new Municipality of Shanghai.<sup>11</sup> New conditions of employment are developing with the establishment of larger factories incident to the industrialization already begun in China. The new factory law enacted for the regulation of such conditions, carries no penalties for its violation; the matter is left to the judgment of the mayor: the idea being that the factories should carry out the easy terms of the law, and submit reports in regard to progress toward the fulfilment of the law. Both employers and employed may report to the mayor if the law is difficult to enforce; the law is enforced in so far as, in the judgment of the mayor, it seems permissible to do so. Some Chinese will explain that the law thus becomes the basis for the cultivation of right relationships. However that may be, it is quite clear that the new law is used not as a fiat with penalties for disobedience, but merely as a goal for changing conditions of industry.

10. Grover Clark.

11. The Municipality of Shanghai is the present all-inclusive term for the Chinese city, the International Settlement, and the French Concession.

Another innovation to western practice, such as is suggested by the mayor exercising judgment concerning the administration of a law, is that administrative officers frequently act in a judicial capacity. Under the present organization of government in China, a large part of the administration is the responsibility of bureaus. These bureaus make rules and regulations in relation to matters with which they are concerned; it is also their business, naturally, to administer these laws. The bureau officials, moreover, exercise arbitrary authority; from their discretion concerning the enforcement of their own regulations there is no appeal. Thus, in practice, administration of justice in China is not always within the formal jurisdiction of the courts which might measure the circumstances by the letter of the law, and penalize for any deviation; it is, instead, a matter of the best possible regulation within existing conditions; in brief, it frequently happens that adjudication is not administration of justice as known at the West, but is administration of government. It has no connection with the new European law courts nor with the courts presided over by modern trained judges. Justice is a matter of administration; an administrative officer is the judge. This may be adequate and wise from the Chinese point of view. The western business man or lawyer, on the other hand, fears the practice: conditions to them seem intangible, uncertain, unpredictable; should a bureau so legislate as to affect business adversely, or should an administrative officer so interpret the rulings, there is no redress such as a western system would provide. Business relationships that might be influenced by bureaus would, therefore, be determined by the policy of administrative officials of government. If they should be experts according to the ideals of Sun Yat-sen, all might be well, but, until they are, results may be disastrous to business, foreign and Chinese.

We may not stop here; there are other modifications of western practice. Not only are administrative officers judges; judges are, in practice, administrative officers. When a case comes up for trial, it may appear that the law is applicable to conditions quite alien to those existing in China, or the law may be too exacting for the specific local conditions. Whenever this is true,

which is usually the case, the Chinese judge adjusts the situation, as best he can, in relation to the law as the goal; in true Chinese fashion he makes the best compromise in his judgment possible between the law as the standard and conditions as they are. One may call it pragmatism, or, again, one may explain it as the persistence of the age-old Chinese conception that the magistrate, who is also the judge, is responsible for "the cultivation of right relationships." From the modern western point of view, however, the discretion of the judge, in such case, takes the place of law; the judge is not a judge of circumstances under the law, instead the judge is an administrator of the law. Moreover, the present government in China looks to its judges, as to all its officials, to do their best for the establishment of the new order, and for the realization of its purposes. The judge must of necessity carry out the policy of government.

Under such circumstances of administrative necessity, when the principle of the separation of the powers of government is not held to be of as primary importance as the maintenance of the government during this period of transition, the Period of Tutelage, another concept, cherished in the West, must be omitted: an independent judiciary may not be expected; it cannot exist. In addition there are other influences brought to bear which make it next to impossible for judges to be impartial dispensers of justice. A few illustrations will show the difficulties the modern well-trained, honest Chinese judge faces. In a recent case in Peiping (Peking), a judge, who had courage, withstood popular furor for the conviction of two Chinese doctors whose patient had died. In this instance the doctors offended particularly because they had performed an autopsy, which is, to the old Chinese, a shocking innovation of modern science. In spite of the fact that both the ministrations of the doctors and the autopsy were with the knowledge and consent of all but one member of the family, who was resident at too great a distance to be consulted, the subsequent protest of this absent member resulted in the arrest of the physicians. Immediately the matter was taken up by Chinese everywhere; the Chinese press demanded conviction. The judge, notwithstand-

ing, was independent of all popular clamor and traditional thinking; he adjudged the facts of the case according to the law; the physicians were released. In another case in Foochow, however, three judges in succession resigned rather than pronounce decision because it was inevitable that the verdict should be against an influential party. And in Shanghai, a judge who decided against a physician accused of misappropriation of funds was removed because important Chinese were offended at the decision.

However much these practices exist in western countries, they are contrary to the theory of the proper administration of justice. In China, however, they are sufficiently familiar to create apprehension on the part of foreign residents for the security of life and property under Chinese judicial practice. In brief, legal systems, transplanted into China, do not function there as they do in their native environment. Therefore, foreigners ask what will happen to business and business relationships if they are brought under the Chinese law as it is practiced? This is the familiar, insistent question of the "Shanghai-minded," who wish to live and do business under the same guaranties they enjoy in their native lands. For these reasons they prefer to continue to reside in special areas under the protection of the law and the courts of their own nation; they vigorously protest any change which shall affect the *status quo ante*. How much of this attitude is psychological, an unreasoned fear of change, how much is justified, can be ascertained only after a description and analysis of business relationships now existing in a legal environment such as has just been suggested.

There is also the question of political justice. Sometimes it is difficult to be sure to which group a case belongs, political or criminal. Examples of high-handed methods used by the Nanking Government further disturbed confidence in the winter of 1931; they added materially to foreigners' fears of Chinese jurisdiction. One of these cases demonstrates that it is quite possible for persons to languish in jail without being brought to trial. It was feared that without extraterritoriality it might happen to foreigners as well as to Chinese. Five salt merchants, Chinese, were charged with corruption in connec-

tion with a surtax levied in 1900. Documents relative to the affair no longer exist, and Dr. Wang Chung-hui, head of the Judicial Yuan, admitted that no proof of guilt had been found against them; nevertheless, they were detained in Nanking without trial for two years; three, survivors of the five, are still in prison. The reason may be assumed to be political. The effect, however, was damaging when the Government was boasting of the establishment of model justice.

In theory the Minister of Justice has claimed that ordinary persons should be brought to trial within a definite period after arrest. In practice, however, there seem to be innumerable reasons for delays; the procurator may even postpone presenting the accused to the court; meanwhile, the accused remains in the hands of the police, who are sometimes brutal.<sup>12</sup> In such case great hardship and injustice are inevitable.

A second case of high-handed methods is that of Hu Han-min, who was subject to special party discipline. Perhaps it should have no place here. It is included, however, because it is interesting and because it had disastrous effects upon the attitude toward Nanking of foreigners, who do not always discriminate between revolutionary or political measures and routine administration. Hu Han-min, deposed head of the Legislative Yuan, was detained, virtually a prisoner, in Nanking, in March, 1931. When Chiang Kai-shek justified this detention at a weekly memorial meeting to Sun Yat-sen, he said:

Being a life-long follower of our late party leader, Comrade Hu has a clear grasp of our late leader's teachings. He has often exhorted his colleagues and comrades to obey such teachings and sacrifice their personal liberty in order to attain the freedom of the nation. The question whether Comrade Hu is really enjoying freedom in his personal movements is therefore one of no great importance.

In this connection it should be clearly remembered that the present National Government has been struggling for the maintenance of its authority, both by civil war and administrative methods. Such incidents are not without precedents in the history of other nations. Did not President Lincoln, during the Civil War, suspend the writ of habeas corpus? Moreover, po-

12. See above, p. 26.

litical interference has been known in courts in the West even in peace times. Experienced and successful foreign lawyers practicing in Chinese courts admit that political factors are known to modify justice there as well as in Pittsburgh, New York, or elsewhere, and for similar reasons, but say that such interference is not excessive. Naturally, such statements will vary in degree from place to place. Flagrant cases of injustice to persons of alien birth are on record in courts of the United States; it may happen in China. Decisions against Germans in minor traffic accidents have appeared to be vindictive—the Chinese have not forgotten the indemnity in the form of the concession in Shantung which was demanded for the murder of two German missionaries in 1898. If, however, we would deal fairly with Chinese efforts for a newly reformed code and judicial practice, we should eliminate as far as possible from our discussion the cases where political influence modifies justice; for our purpose we should keep within the specialized field of business relationships.

Dismissing political exigency, therefore, and the extraordinary procedure resulting, the situation still remains unique. Western law is being copied, but its administration is not western, it is Chinese. Under governmental machinery now existing much legal regulation is bureaucratic and beyond the jurisdiction of the courts, or is purely a matter of administrative discretion. In consequence the adoption of western laws even within departments, does not necessarily mean western theory and practice, it may mean something quite different. Positive law to which even the magistrate must conform in his decisions, positive law in the western sense, does not exist. Western law which means one theory and practice in the West, when adopted in China often means something quite different; actual legal judicial practice, administered in China by Chinese, is Chinese. Must extraterritoriality, therefore, be retained for the security of business relationships in China?

## CHAPTER III

### THE OBLIGATION OF CONTRACT CHINESE CONCEPTION AND PRACTICE

IN the matter of contracts we have another picture of conflicting ideas and practices. The law of contract, incorporated in the new Chinese Code of westernized law, may be textually adequate; the divergence is in its enforcement. In the first place, the judge may consider the circumstances in the case to be such that a compromise settlement would be better than a decision; in that instance it is very difficult to get the letter of the law enforced according to occidental practice. Suppose the contrary to be true, suppose the judge pronounced judgment against the offending party. To western experience this would seem to end the matter, for according to western usage the court decision would have backing and the judgment would be executed. That does not necessarily follow in China. Of course, it is understandable that Chinese authorities might not be willing to enforce the judgment of a foreign court. This has been noticeable in an important case in Tientsin: the United States Court for China in Shanghai issued an order for the seizure of a cargo belonging to the American Oriental Banking Corporation which a Russian (an American citizen) had stored in a German company's godown or warehouse. Since the warehouse belonged to Germans, who are without extraterritorial privileges, the case came under Chinese jurisdiction. Nothing happened—three months elapsed and the cargo still rested in the German godown. Americans were impatient: they felt the delay was due to the inability of the Chinese administration to function adequately; had it been British, Italian, or French jurisdiction, the order would have been executed promptly. The comment of the Minister of Justice in Nanking is that the National Government is not recognizing the jurisdiction of foreign courts in China, and will not, therefore, execute their decisions. This is understandable in the present political struggle against the exercise of foreign sovereign rights in China.

Nevertheless, it is also true that the execution of a judgment rendered by a Chinese judge in a Chinese court against a Chinese is frequently delayed. In Foochow, for instance, a judge refused to order the sale of property for the execution of a judgment because the property would bring only 30,000 taels if disposed of under forced sale. The judge believed the property to be worth 100,000 taels; he would not, therefore, order the sale, which would incur loss to the owner of the property. Nothing could be more Chinese than this. It does not seem fair to a Chinese judge to force a sale and cause a loss, therefore such judgments remain unexecuted. If the plaintiff were a foreigner, there might be political reason for such decision, but the same would be true if the plaintiff were Chinese; the delay is, in reality, due to the persistence of Chinese concepts and practices within the newly adopted judicial machinery.

It is argued by Chinese that when the special privileges of foreigners are removed, the Chinese courts and officials will take pains to give satisfaction to the foreigner in order to justify their insistence upon Chinese sovereignty, if for no other reason. These intentions we believe to be sincere on the part of those who make them, but that noble few cannot control the thinking and local prejudices throughout even the coastal areas of China where foreigners are resident. The code itself, and judicial practice in general, may be technically correct, but it is inevitable that local circumstances or tradition will modify, if they do not nullify, the correct practices. Quite obviously, the adoption of western law and the appointment of trained judges cannot remake the Chinese world any more than putting on a new uniform can make a soldier. If the Chinese themselves perceive the advantage of the adopted system; if they adopt it because it serves them, not because it is the way of the West, or the way westerners think Chinese should follow; and if provisions for the regulation of contemporary Chinese life are incorporated in it—then the adopted system may have value both to the Chinese and to the foreigner.

We shall comprehend the whole matter better if we understand the Chinese methods of procedure before the inauguration of western legal practices, which procedure persists as a

parallel practice today. First, it must be made quite clear that the Chinese law of contract is not a law of contract in the western sense; it is a law of obligation. If a judge does not hold a man to a contract, it is because the judge does not believe that the terms of the contract should be an obligation, or because he knows Chinese public opinion would not so consider it. Suppose a firm of standing finds itself indebted to a bank to the extent of \$50,000, which it cannot at the moment pay. A decisive procedure would be regarded as an unwarrantable affront to the honor of the firm. Instead, perhaps friends of the firm will advance \$10,000 and guarantee the balance; the firm will be given five years in which to pay its indebtedness. At the end of five years an accounting will be made, and further compromise agreed upon; this process will be repeated until the matter is finally settled to the satisfaction of all parties. The affair is treated as a personal matter, not subject to any authority external to the parties concerned. Should the circumstances differ, should a business man go through bankruptcy according to western legal practices, the Chinese creditors would refuse to recognize the settlement; they would pursue the family of the bankrupt for payment; they would demand a settlement of gradual payment according to a compromise of their own making instead of the bankruptcy settlement of the court. To take another instance, if a native bank should fail to meet its obligations to a big foreign bank, like the Hongkong and Shanghai Bank, the guild of native bankers might help out the native bank and full payment could be made in time. But should the Hongkong and Shanghai Bank appeal to the court, the native bankers would do nothing. They would not help meet payment or adjust losses; in fact, they would embarrass the situation as much as possible; and the Hongkong and Shanghai Bank would get less out of the bankruptcy proceeding than by dealing through the guild of native bankers.

Chinese scholars in the field of economics, especially if they live in the north of China, will say that guilds are no longer a real factor in Chinese life; they are a matter of academic interest only. In the south, however, guilds still function. They are no longer, as they once were, the real basis of local eco-

nomie organization, for guilds, like the rest of Chinese society, have disintegrated. But groups of men in the same business will work together and frequently help each other out. If a community has prospered and attempted some organization of its economic life, the guild or group of guilds may appear as a Chinese Chamber of Commerce.<sup>1</sup> Formerly, the local guild through a committee was frequently called upon to adjust matters between merchants who were members of the same guild; or chairmen of different guilds adjusted matters between members of their respective guilds. Committees of the newly organized Chambers of Commerce frequently function in this capacity. Thus, the adjudication of business disputes has been and is beyond the jurisdiction of courts, new or old. One may parallel this practice with similar practices in the West which have been developed, especially within the last decade, to avoid the expense, delays, and pitfalls of judicial procedure. Such development in the Chinese Chambers of Commerce, however, is not borrowed from the West, it is indigenous.

It is interesting to note in passing that Germans, since their extraterritorial privileges were withdrawn, have used their Chambers of Commerce, or committees thereof, as courts of adjustment between their members, instead of going into Chinese courts. They are, therefore, closer to the Chinese in their practices of arbitration than any other foreigners.

It is true, as we have already said, that it is in the south rather than in the north that the old Chinese guild persists. Yet it is also in the south that western bankruptcy law is practiced. This inconsistency is characteristically Chinese. Alongside the guilds, the members of which assist each other in getting customers and collecting payments, there exists a situation that is entirely different. In Canton western influences have long been strong, and western practices have been initiated. It is from this region that Chinese have migrated in greatest numbers, and it is to this region that Chinese with foreign experience have returned. In this area it is reported that voluntary bankruptcy has been practiced, leading to the accumulation of wealth. But this is not the result of the imposition of western

1. Cf. Pepper, *op. cit.*, pp. 128-130.

law; it is the result of the adoption of a western device which individual Chinese have seen to be workable to their own advantage. Elsewhere the older concepts hold: When individual Chinese are involved, the family or guild are held responsible or hold the other party responsible, and are satisfied only with such adjustments as they themselves make. In general the formal legal methods of procedure of the West are possible only between western or westernized firms or banks; beyond that they do not work satisfactorily.

The Chinese president of a large export-import house once put the Chinese point of view with reference to contracts in the following terms, paradoxical to the West but reasonable to the Chinese. He argued that if a firm or individual business man is good, is dependable, and has long been in good standing, his paper is good and, therefore, there is no need of a paper contract. If, on the other hand, a paper contract appears to be necessary to safeguard uncertainty, the party is weak and the paper is really no good. It costs too much, and there is too much delay, to work through the courts. This well-established firm, therefore, maintains an independent position—it chooses with whom it will deal, and its relations are determined on the basis of friendship and experience. The new codes and courts do not figure in its world—they are extramural, so to speak. This company does, however, have a written memorandum of the conditions of each transaction, which it calls a contract. This, although it is not used as a basis for legal process, does provide for the adjustment of differences concerning any transaction by arbitration. In reality this document is intended to protect the company—which prefers ordinary Chinese methods of personal guaranties and compromise settlements—from being taken into the new courts. The point of view of this business executive could be duplicated so many times that it may be taken as, in general, applicable to business dealings among Chinese inside China.

However, a somewhat similar point of view is held by Chinese doing export business. The head of a successful exporting house, for example, refuses to enter into contract with its New York buyers. The argument in this case is that the contract,

signed or not signed, is no good except to embarrass the exporting house; circumstances of employment in China, beyond the control of the exporter, determine what can be done, contract or no contract. If the workers do not live up to their agreements, if the firm cannot get the goods delivered as per order at a certain date because of the disturbed conditions of the country, the firm cannot ship the designated quantity within the time allotted. This exporting house refuses, therefore, to sign any contract which might involve any penalties or guaranties. It offers its record of honest and prompt service as sufficient guaranty that an order will be fulfilled to the limit of its power. Last year thirty-three thousand bolts of linen were received, goods were embroidered, made, delivered, according to specifications and within the time set. There was a contract in honor but not in law.

It is also interesting to know that an American company having dealings with Chinese corporations involving large sums takes the same position toward contracts as that of the Chinese importer. A contract is a memorandum of the transaction. The conditions are invariably fulfilled, often in spite of adverse circumstances; they are fulfilled not because of the contract but because of the obligation. A cynic might say, it is good business to meet the terms of one agreement in order to get another. Howsoever that may be, the fact remains that obligations are fulfilled; it is to be remembered that this firm knows its clients and is convinced of their business honor before business negotiations are entered upon. In export business certain modifications of this practice should be noted. When the exporter does not have regular clients, as indicated above, exporting is not done under contract but under irrevocable letter of credit. Standardizing of goods in China has been difficult and uncertain; the foreign bank, through which the money transaction takes place, does not trust to the exact fulfilment of any contract; it will not assume responsibility for such fulfilments; goods purchased must be paid for in advance, and the contract is then regarded as fulfilled. This is frequently the practice of Chinese banks also. Where there is lack of confidence in export business, there cash is required; where there is confidence, or

reputation meriting confidence, a "contract" is required but serves simply as a memorandum.

Similarly a cash guaranty on imports is often required. This practice is general when Chinese are importing for Chinese who have no bank reserves; it is also true when the parties are not well known to each other, are not tried and proved, or when a firm is known to be weak or uncertain in its payments. In such cases an order for goods to be imported will be accepted only when 10 per cent or 20 per cent is paid in advance of the order. This is called marginal price or bargain money. This margin is estimated as coverage for fluctuating exchange or price change; it is supposed to cover expenses until goods can be unloaded and accepted; it is also guaranty against loss should the buyer fail to accept the goods on arrival, which would necessitate resale in the open market for the 80 per cent of the cost still due the importer. By such means all possible loss to importing house or bank is covered before either will take an uncertain venture. Machinery is always so covered at times even to 50 per cent of the price, because machinery, which is not general merchandise, but is usually ordered for specialized purposes, perhaps even under specifications for particular conditions, has little chance of resale. When a high marginal price is exacted, however, it is usually accepted, even if prices and demand have changed since the order was placed. Here it is quite evident that we have a prepaid penalty against the breaking of what might, in other circumstances, have been a contract.

Chinese business, like business the world over, is done on credit; the difference is in the kind of guaranties. Most Chinese business depends upon friendly relations, or cash guaranties, not on law in the western sense.

In practice there is sometimes a combination of methods—modern legal methods and old customary Chinese ways. This may be called a transitional stage, or this combination of methods might be taken for the characteristic Chinese method of compromise, according to circumstances. There is an interesting illustration in the story of a Chinese broker or distributor who found himself financially involved and threatened with bankruptcy. He owed an American company two or three thou-

sand dollars; the American in charge had, for many years, been a good business friend to his Chinese customer. The broker, therefore, forewarned the American not to be alarmed at rumors of bankruptcy because he would receive payment for all consignments in full before the proceedings. This in very fact happened; the entire sum owed the American manager was paid to him two days before bankruptcy was declared. Payment was made where friendship required. Bankruptcy proceedings prevailed where there was no obligation of friendship.

The practices of buying and selling just described proceed without any regard to extraterritoriality. For that reason they enable us to see why it is that business men and bankers, both Chinese and foreign say: "Business never has depended upon extraterritoriality"; "Anybody can do business; extraterritoriality is politics." Business in China functions in a world of its own.

Relationships between foreigners are not under discussion here; these have functioned according to western legal practice in consular courts. Since the World War the Germans, Austrians, and Russians have been without extraterritorial rights and hence have come under Chinese law. Of these the Germans are most concerned with business in China, and are of especial interest to us. Their status without "extrality" (the vernacular for extraterritoriality) is naturally of interest in view of the threat of nullification of all extraterritorial privileges by January, 1932. Extraterritoriality, as already defined in chapter i, means the right of foreigners to be tried in their own consular courts in China; when described from the Chinese angle, however, it means that foreigners with extrality privileges do not live under Chinese law in China, but under their own national law which functions as sovereign within certain limits and discounts the sovereignty of China. The issue to them is quite clearly *imperium in imperio*. With extraterritoriality abolished all persons within China will be under Chinese law. The special areas in which foreigners live—concessions, crown leases, colonies, or the International Settlement in Shanghai—because they are under foreign police protection, have enjoyed added security. Foreign Minister C. T. Wang

predicted that by January, 1932, "unequal" treaties, or the clauses of treaties, granting special privilege or extraterritorial rights would be abrogated. With such abrogation the Chinese have assumed that the foreigners' privileged position, through consular jurisdiction and within special areas, would be ended. In this connection, therefore, it is interesting to inquire if the Germans are especially handicapped, or if their business proceeds as does the business of those at present enjoying protection under the special treaties?

In attempting to answer this question it must be remembered that the leading German firms have been long established; they have well-trained Chinese staffs who know the Chinese business world, and who determine with whom it is safe and profitable to trade. In the beginning all foreign firms had compradors, or business managers, who were held responsible for the business transactions of Chinese with the firm; these compradors were, in reality, the equivalent of the modern sales manager plus credit insurance. More recently the comprador is being superseded, for reasons which will be discussed later. When there is no comprador the foreign manager deals with such customers as are accredited by reputation or by members of the Chinese staff; he also deals with dependable Chinese brokers who are buyers and frequently guarantors for small purchasers on the coast and inland. The firm endeavors to safeguard all transactions by so-called contracts, which, as has been indicated above, are descriptive of the terms and conditions of each transaction; these written memoranda are known to the Chinese as *dongs*. German firms, in their contracts, or *dongs*, with the Chinese make this provision: "In case of a dispute arising out of this contract same to be settled out of court by arbitration." Thus, they safeguard themselves, as do the Chinese, from the delays and uncertainties of the Chinese courts. Germans, in particular, fear that decisions might go against them because they are Germans, or penalties might be excessive for the same reason. There are some indications that Chinese might take revenge upon them for what other foreigners have done to Chinese at other times and under different circumstances. Negotiations through their Chinese representatives seem to the Germans to

be surer, and, at the same time, more satisfactory to the Chinese themselves, whose friendship is coveted as a business asset. Thus the Germans succeed as the Chinese themselves succeed by methods known to the Chinese. By fair dealing the Germans endeavor to avoid complaint, and in practice they live in an extralegal world in relation to western law.

An interesting fact, noteworthy in this connection, is that the new Chinese Code lacks provision for arbitration in business affairs. It contains laws passed by the Legislative Yuan providing for arbitration in labor disputes, and for arbitration in domestic relations, but none for business relationships. The explanation seems to be that there is nothing radically new in business conditions. Laws have been promulgated to meet change where it has occurred: in manufacturing, labor is now employed on a large scale in factories using power machinery, instead of according to the simpler conditions of domestic industry; in domestic relations and matters of inheritance, laws have been provided to safeguard new concepts of individual rights in relation to the family group. But special laws for arbitration in business disputes have not been considered necessary by the lawmakers of Nanking; methods of exchange of commodities continue little modified except by modern banking techniques which are practiced because they are useful, not because they are required by law.

Arbitration for the adjustment of business disputes has long been practiced in China in a somewhat modified form; but in such a case the matter is said to be adjusted by compromise, and the procedure is slightly different from the semilegalized process of arbitration. This custom may partly explain why formal arbitration with Chinese has not been found to be satisfactory. In practice there are other factors which have contributed to the frequent unsatisfactory results from attempted arbitration. In the first place it has not been possible to hold Chinese to arbitrate a grievance against them which might arise out of a business transaction described in a contract; the reason given has been that there is no Chinese law providing for the arbitration of business disputes. In cases where arbitration has been entered into, if the Chinese party has not liked the award

he has refused to fulfil it; he has justified his action in the fact that there is no Chinese law or legal interpretation obligating Chinese to fulfil the terms of the settlement. A famous incident, in Foochow, of attempted arbitration between Chinese and the importing house of Anderson & Meyer (an American firm) illustrates the situation. The Chinese were dissatisfied with the award. When they protested to the Chinese court it ruled that since there was no law requiring Chinese to accept an arbitration award, even though they had so agreed when the arbitration was undertaken, the Chinese party did not have to accept it.

On the other hand, one hears of successful cases of arbitration between foreigners and Chinese, even when the Chinese are the losers. "In such cases, if the arbitral decisions seem to the business associates of the Chinese concerned—those who make up his business community—to be essentially fair, the award will be met. Otherwise probably not." Early in 1931, for example, a claim which a foreign shipping company had against a Chinese salvaging company was arbitrated. Dr. George Sellett, United States District Attorney in Shanghai, who had been invited to serve on this special board, rendered the award; the Chinese paid up. There seems to be no general practice one way or the other; arbitration fails and arbitration succeeds; it depends, as do most things in China today, on the good will of the parties involved. In the matter of arbitration as in the matter of fulfilling contracts there is no written law, exterior to the individuals or circumstances, which is supreme.<sup>2</sup>

Formal arbitration then, according to western methods, is not very successful, except between Germans and those who have no special courts through their own Chambers of Commerce. But adjustment by compromise according to Chinese practice is quite common; if it is done by a Chinese representing the foreign firm, and done in the Chinese manner, it is fairly successful.

2. "There is a very powerful customary or common law to which, through the Chinese business community, appeal can be made to secure enforcement of a fair arbitral decision. The 'equities of the situation' will be held by the Chinese business community practically always, though the technicalities of the law will be ignored. I speak from personal experience" (Grover Clark).

A common complaint of the foreign business man in China today is that the Chinese do not keep contracts; goods ordered are not accepted when they arrive. The reasons given by the Chinese are characteristic of them, and both amusing and irritating to the western mind. They say that conditions change between the placing of the order and the delivery of the goods: prices fall or exchange goes up; perhaps there is less demand for the goods ordered than was anticipated; any number of reasons may be advanced which, to the Chinese way of thinking, should free the purchaser from the obligation of receiving the goods. All this annoys the foreigner, who explains that when the occidental signs a contract he seems to believe that something has really happened and that "no power can change it unless it meets a higher law or an act of God." To the Chinese, as has been indicated, the contract is assumed to be a memorandum of the terms of the agreement in the past tense. Three months later if the circumstances have changed he does not necessarily hold himself to the contract. This attitude—that the contract is really a memorandum of the terms of the transaction—is accepted by foreign firms which are successful in business with Chinese. The character of the parties, not the contract, really determines the fulfilment of the obligations; when neither believes he can afford the effect upon his business integrity of failure to meet all obligations, then the contract is fulfilled. This is especially true of modern Chinese banks and well-established import-export houses; contracts are fulfilled, not to get business, but to maintain scrupulous conformity to correct business technique and to maintain their standard of business honor—certainly not because they are contracts imposed by western law.

In the good old days it is said that the word of a Chinese was as good as his bond; it is still true within certain limits. Conditions of modern business have been very unstable; prices, market demand, and general conditions of trade change more rapidly now than formerly. Sharp practices of foreigners who came to China to get rich quick taught the Chinese to watch out for themselves; contracts—introduced by those eager for profits, and intended by them to safeguard themselves against

any possible loss from any variation in the market prices or demand—usually caught the Chinese to his disadvantage; when any deviation from the circumstances on the day of the contract occurred the Chinese was usually the loser. Chinese, therefore, sought ways of avoiding the disadvantages thus incurred. They took this ground: If the circumstances change, the terms of the contract are therefore modified. This reasoning supplied them with complete protection against any contract which might become disadvantageous to them. It must be acknowledged that business morals seem to be less high than formerly, the world over. High-pressure salesmanship has its safeguards and its traps; business deals, in New York City, let us say, are sharp and not always square; practices of foreign business in China cannot be exempted from such criticism. The Chinese have been exploited; now, many of them are doing as they have been done by. In other words, Chinese have learned from experience with western practices; they safeguard themselves.

Another fact to be taken into consideration is that in the earlier days business was limited to such Chinese as were accredited by the comprador, who was held responsible for the fulfilment of agreements. Fewer risks were taken. Recently, because of the pressure for markets, foreigners themselves have been taking risks; they have dealt directly with less well-accredited Chinese; business has been more miscellaneous, less select; old conservative conditions of security have been abandoned on both sides. Today a new order is demanded. Successful foreign business in China, as we shall see in chapter v, is the business that is done along expert scientific lines; it is also that which is skilfully adjusted to its environment. In addition to all this, if foreign business is to succeed in China in the future it must be ready not only to adjust to Chinese conditions, but to a much-needed new international comity and polity. To quote the very wise United States Commercial Attaché in Shanghai, Mr. Julian Arnold, there must be "appreciation by the individual of the responsibilities of trustee-ship in the conduct of modern business."

## CHAPTER IV

### THE WESTERNIZING OF CHINESE BUSINESS PRACTICE

THE Chinese have learned the business methods of the West in spite of themselves—sometimes to their advantage, sometimes to their discredit; they have also learned to their profit, and they have entered upon their own regeneration. They are imitating what they believe will be to their own advantage: it may be import-export business long monopolized by the foreigner; it may be international banking.

For a long time the banking of China, in a modern sense, was in the hands of foreigners and foreign banks. Today many foreigners in China are doing business through modern Chinese banks. More than that the modern Chinese bank has found its place in the international trading world. It is the one great Chinese institution that has accepted the standardized, expert technique of the modern business world, and functions successfully. This is an achievement of which the Chinese may be justly proud.

In the field of banking Chinese have learned modern western methods of their own volition; they learned banking technique, not because it was required of them for the protection of other nationals, as was true of the adopted codes and court procedure, but because it was to their own advantage. Then, too, modern banking, being a practical matter without accumulated traditions and rules for human relationships, would seem to be easier to imitate and practice than is the case with law and judicial procedure.

Nevertheless, the modern Chinese bank has its roots in the Chinese business world with its customary ways and personal relationships which are what they are because Chinese society has been what it is for five thousand years. The branches, if we may carry out the figure, may spread far in the free air of scientific, objective business procedure according to principles of

banking, but its roots are restrained by the varied strata of personal relationships, guild associations, family obligations, adjustments of obligation through compromise, and many other elements not always recognizable or understandable by one of alien training and experience. The modern Chinese bank is, because of this situation, definitely, even consciously, the liaison agent, or the "go-between," fitting the claims, demands, and methods of one business system into those of the other. Managers of the best of these Chinese banks acknowledge their responsibility for the education of Chinese in expert, scientific, impersonal business methods according to accepted rules. It is a self-imposed responsibility, conceived by them as a patriotic duty.

All Chinese banks acknowledge that in China money is loaned on friendship and reputation as much as, or more than, on collateral; this is the age-old Chinese method. In the Bank of China in Tientsin, for example, there is a bank visitor who reports three or four times a week the condition of clients' business. This knowledge is accepted in lieu of collateral. Even if land deeds are offered as collateral they are troublesome because deeds are frequently held in family ownership; such method is less satisfactory than the old Chinese method, which is almost like what the West calls good will. The business man having the equivalent of collateral, adequate according to Chinese standards, may buy goods from abroad on his bank's credit; after the merchandise arrives in China he must pay cash for it as it is released to him from the bank's godown; the bank purchases for him on Chinese credit but delivers goods for cash payment. If the client is not very dependable the bank may require a margin or bargain price (already mentioned in chap. iii, p. 40) to cover the fluctuations in price, or the cost of transportation which the bank may have to advance. This varies from 5 to even 50 per cent, depending upon the risk and the character of the goods purchased.

This same Bank of China—which has branches in all the large cities of China—has specialized in international banking; its purpose is to establish branches abroad in order to serve the Chinese in foreign trade. At present through its one branch in

London, it can serve Chinese business men in England who may not have sufficient security to get needed service from a British bank. The Bank of China can, because of its knowledge of the financial standing and business record of a man or company in China, extend to him the credit necessary to the carrying on of business abroad; the security may be partly personal guaranties, partly local reputation. Thus, the Chinese bank, in international banking, is doing business for Chinese in foreign parts according to Chinese methods.<sup>1</sup>

Meanwhile through its branches in the smaller cities of China it assists merchants from the interior to purchase goods from agents or factory representatives on the coast. It extends credits to them on their local reputation; they are even allowed to take goods on trust receipts from the bank's godown, the bank's knowledge of the client's business prospects and business integrity standing in lieu of collateral. This same bank, in the coast cities, extends packing credits to its strongest customers who are in the importing business. If cash—or even if good will, or the character of a man's business supplementing the cash—is offered in payment for a large order of goods which on arrival will be withdrawn from the godown gradually and for cash payment for each allotment, then the bank will accept the goods in the godown as security for another order for the same importer. These packing credits enable Chinese to compete with foreign rivals who may have more adequate capital or who are able to do the same thing through foreign banks.

In the main all modern foreign Chinese banks serve the Chinese business world in similar ways, yet each of the great Chinese banks—the Central Bank of China, the Bank of China, the Bank of Communications, the Chekiang Industrial Bank, the Shanghai Commercial and Savings Bank—is making its own special contribution to the development of Chinese banking. The Shanghai Commercial and Savings Bank, for instance, has been developing personal trust accounts for its depositors; it has established the first fidelity insurance department in

1. Large Chinese banks have correspondents in the United States which, in a measure, take the place of branches. Chinese banking methods, however, cannot be practiced through corresponding banks as is possible through the London branch of the Bank of China.

China; and it has been directing a China Travel Bureau—the Chinese “American Express”—which is giving excellent travel service.

These modern Chinese banks, through their inland branches, are teaching Chinese of the interior as well as those of the coast, the uses of banks. In the beginning deposit accounts were unknown; the old Chinese bank was a bank for borrowing. Surplus capital, which was insignificant except in the aggregate, was hoarded or spent. Through deposit accounts the new banks are teaching the advantages of saving, of accumulating capital for business, for purchasing machinery, for raw materials for industry, and for investment. Such procedure has a double advantage: it removes the control of private funds from the administration by the family for the support of innumerable relatives whose claim, in China, has been regarded as inviolable; it accumulates capital, which is greatly needed in China. Thus it becomes possible for the Chinese merchant, let us say, through the use of drafts, and letters of credit, to buy advantageously; moreover, he saves the high rates of interest he formerly paid when he bought on credit. Thus, with branches inland, the modern Chinese bank is making a real contribution to the extension of stable business relationships and the development of the Chinese business world. By their assistance to cash buying, and to direct trading with foreign countries (cutting out the profits of the foreign importer), the Chinese modern banks are building up Chinese business in China in competition with foreign business. Through dealings with the Chinese modern bank, Chinese are learning definiteness of accounting, promptness of settlement, and other procedures according to definite rules for payment and security.

These banks are making a practice of explaining the two-name note of western banking usage as a new form of the old shop guaranties long in common use among the Chinese themselves (see below, p. 54). Such substitution of new for old makes the transition from dealings based on personal guaranties and personal relationships to transactions of a legal contractual nature. A new practice with an old interpretation is thus making a syncretism of western business methods and

Chinese customary ways which anticipates a new order in China's business world.

With more definite security which is thus gradually being required of the Chinese, banks are enabled to charge lower interest rates than formerly. Good, even advantageous, terms win both patronage and conformity to banking practice. As industrial life develops and bonds are marketed, it will become possible to have negotiable collateral which is useful both for investment and security—collateral or bonding. Gradually, the advantages of modern banking are being recognized; ultimately, it is possible that the new ways may be accepted by all Chinese clients.

In consequence of the real advantages to the Chinese business man and his business world, these modern Chinese banks, whose patronage is steadily increasing, are threatening the business of the old native banks. The reason is very simple: it is profitable and advantageous for the inland Chinese to have money on deposit—"current accounts" or "savings accounts." In the first place he gets interest on his money left on deposit; then if he is a merchant and has accumulated a small amount of capital, he may negotiate letters of credit or send drafts for the purchase of goods at advantageous prices at the seaports. These things he could never have done without the modern bank. Moreover, the inland Chinese, who are dealing more and more through the modern banks, are conforming to principles of banking practice; they are departing from traditional business ways. In consequence, something very real is taking place: Chinese are conforming in practice to procedure based on law or rules and regulations external to the circumstances of the particular case; the personal circumstances of each case which formerly might have been influenced by personal relationships or political favor are becoming of secondary importance. Perhaps in banking, as in no other way, the Chinese business world is being transformed fundamentally. The transformation is taking place slowly; it is coming, however, because it serves vital interests of the Chinese themselves.

The big foreign banks are mainly foreign-exchange banks, doing business with foreign firms. Some of the smaller foreign

banks, however, are doing something similar to these modern Chinese banks: they are financing foreign buying by the Chinese merchants.<sup>2</sup> If a client wants an order of goods from New York, the comprador of the bank may pass upon the reputation, personal guaranties, or shop guaranties of the client. Then, the bank authorizes its New York bank or agent to purchase the drafts and documents on the firm in China, that is to say, the New York agent pays the exporter for the goods knowing that the sum will be repaid to him by the bank in China. The client pays the duty and has thirty or sixty days in which to pay for the goods as he takes them from the bank's godown.

Similar overlapping of Chinese and foreign business is manifest in trade with the interior. A foreign importing house may use a modern Chinese bank, because it can trust it through its inland branches, to collect on documentary bills of lading, that is, to collect payment before the goods are released; or it can sell the shipping paper to the bank, which will reimburse itself on its own terms; or, in some cases, with the Chinese banker's guaranty, the foreign merchant will extend credit for a few days or until the customer can take delivery of the goods. If goods are stored, the godown, except in unusual cases, must be controlled by the bank to assure the business procedure of warehousing—namely, that goods are delivered only on receipt of cash payment or its prearranged equivalent. Similar precautions must be taken in the shipping of goods into the interior: a foreign shipping company, as yet, must be the transportation agent, for it, and not the Chinese, may be trusted with the shipping paper of modern trade—trusted not to deliver the goods until payment has been made through such proper banking channels as shall guarantee payment to the shipper. Much minor shipping is safely done by Chinese for Chinese without any such formalities; it is usually done on the basis of some friendly obligation: membership by the shipowner in the local guild of which the consignee is a member, or some other adequate relationship which will guarantee obligation in the matter. Business of an impersonal nature, or large-scale business of

2. The larger foreign banks do this to a certain extent; usually, however, it is not for the smaller Chinese merchants.

foreigners, is nobody's obligation, therefore it can only be done through the modern Chinese bank, which, as yet, is the principal Chinese institution that functions according to rules external to the parties concerned.

Just as the foreign business man uses the modern Chinese bank for his own advantage in business with the interior, so the small Chinese business house, in developing its business through direct buying abroad, is dealing through the small foreign bank. This is so because even a small foreign bank will have wider experience in a foreign market than can a Chinese bank; the small foreign bank can also do business cheaper than the Chinese bank, whose interest rate must be higher because of the risks taken on non-documentary guaranties, which, to the present, must be accepted from time to time. Moreover, the Chinese bank is frequently without capital on deposit in many foreign cities, and is therefore less ready to serve buyers than are the foreign banks; in other words, the Chinese bank is not always as able to buy drafts and shipping documents in all the great trading centers as are the foreign banks which have been longer established and have many banks corresponding with them.

In spite of notable achievement, it must be remembered that Chinese modern banking is as yet young; it is really post-war. Within that time, however, Chinese banks have become government depositories for the customs revenue: this is in the hands of the Central Bank of China, the Bank of China, and the Bank of Communications. Through the purchase of Chinese government bonds in the foreign market, these banks have been able to deposit security in that market for their foreign-exchange business. Most banks have built warehouses in order to be able to control imports, purchased through them, until paid for by their Chinese clients. They have, as has been noted, developed extensive business within China itself. Notwithstanding all this, on closer view, many things are lacking. There is no clearing house; clearing in many places is a matter of collection which is considered to be the business of the comprador. If he fails to collect, it is his loss against which banks hold his cash guaranty for honor and honest management.

There is no bonding house; guaranties are paid in cash or clear title deeds wherever possible, but mostly guaranties are "chopped" by two or more shops, depending on the size of the guaranty and the wealth and financial standing of the shop. The "chop" is the signature of the shop or shopkeeper, usually stamped in red ink from a carefully carved ivory seal. When it is put upon a document which vouches for the honor, honesty, and ability of a certain party named in the document, it becomes the Chinese equivalent of a western guaranty bond. These guaranties belong to the Chinese world of personal honor. Their binding character is measured quite largely by the sense of personal obligation held by the parties involved.

Furthermore, there are no trust funds and consequently no trust departments in Chinese banks. Until very recently money was not held individually—it was the property of the family. With the new inheritance laws where provision is made for equal division of an estate among children, there may be need for trust funds. The management of trust funds as a function of banking awaits the maturing of a generation who have experience and knowledge of modern banking techniques.

Nevertheless, in spite of its youth and notwithstanding the omission of a few supplementary functions for which there is as yet little demand, Chinese banking is making a great contribution to the establishment of a Chinese economic system within China itself. It is contributing its good offices for the transformation of customary ways into ways of modern business procedure international in character. Something quite alien has been engrafted onto the parent stem. Moreover, this something is of the essence of positive law: principles and practice in banking are according to rules which are impersonal and uniform. If it is advantageous to them to conform to law external to themselves in banking, will it follow that they will find it equally advantageous in other lines of business? Will such experience advantageous to themselves ultimately contribute to the concept of positive law? And will such a concept modify present conceptions of justice and relationships under the law?

These are speculative questions which cannot be answered; instead, happenings and trends may be observed. One fact is

indisputable: the whole banking world in China has been changing. In the first place, the competition of the modern Chinese bank, together with that of the smaller foreign bank, is lessening the foreign-exchange business of the long-established foreign banks; through extension of credit to the Chinese, these newer banks are assisting them to carry on trade directly, without dependence upon the old foreign banks. In the second place, the modern Chinese bank is putting the old Chinese bank out of business by the superior effectiveness of its new, scientific business practices. And, finally, the new Chinese bank is serving the Chinese firm in the interior and the Chinese firm abroad; it is synthesizing the Chinese business world. Consequently, the monopoly of banking in China by the foreign bank is over. It is passing not because of legislation, nor the annulment of treaties, nor the threatened abolition of extra-territoriality; it is over because Chinese people themselves are learning the advantages of scientific modern banking. Modern Chinese banks are succeeding because they have performed services beyond the scope or abilities of the old foreign banks; they have made themselves indispensable to the Chinese Government, which has submitted to an increasing amount of dictation from them. *In toto*, Chinese modern banks have established themselves on the foundation of good business.

A like competition is felt by foreign business in other lines. Chinese department stores are gradually taking the place of the foreign establishments. This is due, in part, to the fact that foreign-trained Chinese are getting adequate experience abroad and can handle large undertakings better than formerly. It is also due to the fact that the Chinese themselves, speaking Chinese and knowing Chinese tastes, can cater to Chinese demand or even create new demands which are normal developments of older requirements much better than can any foreigner. In the third place, the Chinese can run on less overhead and thus compete successfully with foreign firms; in the item of salary, alone, there is great saving: a good Chinese clerk can be had for a hundred dollars a month, while a foreigner will cost three hundred. This is possible because the Chinese may live at home or under conditions unacceptable to the foreigner, while the for-

eigner, living according to western standards, which are more expensive, must also have a surplus for recreation to which he is accustomed. Then, too, the foreigner must be able to go home on leave every three or five years, which is an expense unknown to the Chinese clerk. Moreover, it now appears, with the gradual elimination of nepotism, which formerly prevailed because the family was dominant in Chinese society, and with the employment of individual Chinese who are qualified to practice modern methods of salesmanship and accounting, that the Chinese department stores, as well as other Chinese businesses, are competing more and more successfully with foreign business.<sup>3</sup> Modern business methods practiced by the Chinese are slowly but steadily building a new framework for Chinese economic organization. The Chinese have more to learn and far to go, but they are steadily gaining ground. Again, it is successful competition on the part of the Chinese, not governmental interference nor threatened abolition of extraterritorial rights, which is resulting in foreign business having to adjust or find new channels. The growing economic power of the Chinese themselves may in time counterbalance the advantages they think foreigners have because of treaty rights. Economic laws may work throughout the business world as the principles of modern banking practice are working in the Chinese banking world; an interweaving of foreign and native business may replace the dominance of the foreigner by the dominance of the Chinese, because he is better suited to Chinese environment. These changes are taking place within the scaffolding of extraterritoriality; the new structure does not rest on the scaffold, but the construction has been possible within it. The present great achievements of the Chinese banking world, and the development of the great merchandising institutions, have been possible during these recent years of turmoil because there has been security for the parent institutions in the special areas held by foreigners who had extraterritorial privileges. Here they have been protected from seizure or extraordinary exactions of ir-

3. Where nepotism still prevails and where less skilled labor is concerned, it always takes many more Chinese than foreigners to do a specified piece of work. This increases Chinese labor cost, which in terms of per unit of product is not cheap.

regular and unreasonable tax levies by local military authorities or by local provincial authorities. The truth is, the competition that is making inroads into foreign business has been within areas where foreign business was considered to have prestige and advantage. Adjudged by banking, we might conclude that as the Chinese become experienced and develop their own economic life economic laws more potent than political factors may determine their triumph. Extraterritoriality seems not to be hindering the Chinese in the modernizing of their business processes; it seems not to be safeguarding the foreigner against readjustment as evidenced by successful Chinese competition. If the process is allowed to continue, the advantages or disadvantages of extraterritoriality will appear to be less important than now; Chinese successful in their newly developing business world say that ultimately it may be even laughed at as an absurdity. As stability increases due to the development of Chinese business life and to greater efficiency in governmental administration, it will undoubtedly be true that there will be no excuse for extraterritoriality; it will not only be an absurdity, it will be nullified by new circumstances making it useless.

Notwithstanding all this, further knowledge of business conditions and business relationships is necessary before arriving at any definite conclusion. In the great business of importing and exporting, as well as in banking and in department-store business, changes are taking place, the knowledge of which may modify or reinforce the tentative conclusions just stated.

Until recently, the business of importing and exporting has been the *raison d'être* of foreigners in China.<sup>4</sup> The old, long-established foreign import-export houses began to trade in China before foreigners could speak Chinese, and when Chinese ways and the hinterland were alike unknown. These houses of necessity employed a Chinese manager, the comprador, to be their go-between with Chinese tradesmen. The comprador, who

4. Missionaries have been in China for other reasons than those of business; and, since most of them profess not to contend for the maintenance of extraterritoriality, they can be eliminated in this discussion, which concerns the bearing of the abolition of extraterritoriality upon business contractual relationships.

in all probability had been a merchant himself, deposited a money guaranty as security to the company for the credit he might extend to customers; sales, collections, and methods of collection were the responsibilities of the comprador. In those early days the compradores and Chinese merchants were in clubs and guilds, and all business was registered; the guilds looked to it that no merchant was overtrading, or buying beyond his ability to pay. Competition was slight; the volume of business did not exceed the comprador's guaranties; business conditions were fairly secure, for Chinese business was kept in normal channels by the Chinese themselves. These are the so-called "good old days."

Today the volume of business far exceeds any possible guaranty; with keener competition the risks are greater and the firm must share with the comprador the losses involved. Moreover, with the increase in the number of import-export houses, especially when Continental firms entered the arena, conditions changed. Continental firms offered long-term credits; buying got beyond the control of the guilds; compradores were expected to get more orders; they took greater risks. On occasion compradores even went into business for themselves, or they became partners in numerous native companies. By such means, presumably, they secured business for their houses; the native shops with which a comprador was associated would, for reasons of friendship, naturally, trade with his foreign house. Sometimes, however, instead of advancing the business of the foreigner, the credit of the import house was secured for the purchase of goods to the advantage of the native merchants. Such manipulations were the inevitable result of rapidly increasing business and continued demand for more business.

The piece-goods crisis of 1920-21 is often quoted as the classic example of this procedure. At that time dealers had overbought without fixing exchange, and when the tael fell to half its value the dealers banded together and refused to take delivery. In many instances these dealers proved to be compradores of the foreign firms: they had gone out for themselves; they had lost pride in their honesty, and were using their positions for their own advantage. A compromise was finally agreed upon whereby the guaranties of the compradores were held as

security for long-time liquidation. But when a comprador sued a foreign import-export house for the release of his bond, the consular court refused him. The consular court thus safeguarded to the foreign firm the contractual relationship of the comprador's guaranty. At that time, as now, within a concession area the law of the West, not the law of China, prevailed for the protection of the foreigner. The business relationships of 1921 were secure against attack by the ascendancy of western law.

Long ago, in an earlier piece-goods crisis, when Chinese dealers refused to take goods ordered, the Chinese Government, on representation from the Powers, paid the losses. This right of protection was assumed to be within the treaty guaranties. By 1920 the Chinese Government would no longer accept such interpretation; business negotiations were business affairs, no longer governmental affairs. But the foreigner in business relations with the Chinese was and still is protected from suits originating in the Chinese courts; he is secured in the application of law as he knows it within the jurisdiction of the consular courts.

During the decade since 1921, great changes have been taking place: the foreign import-export houses have been giving up their compradores, or depending less and less upon them; they must practice expert business management. The reasons are purely business reasons. The compradores, as just indicated, did business for themselves on the side and gave their best endeavor to their own profit; compradores are often content with easy-going ways, they are not always sufficiently well trained in modern business methods, nor are they any longer the only go-betweens available. Today Chinese are speaking English and foreigners are speaking Chinese. The Chinese who have been foreign trained, and others as well, prefer to deal directly with the head of a business house rather than through the comprador. They prefer to save that percentage that would go to him for his good offices. Moreover, there are brokers who, if necessary, serve well as good go-betweens: they know the foreign houses and foreign goods and can, therefore, assist the Chinese merchant to find the company advantageous to him; they also know the standing of the Chinese merchants and can

vouch for the worth or dependability of the customer. In some cases the broker can be held responsible for the deal as was the comprador of earlier times. The comprador is no longer the best credit manager obtainable. Moreover, it is now possible for foreign firms to employ young foreign-trained Chinese in various departments, not as compradors but as experts on the staff. A part of their expert function is to keep the foreign staff informed on details of the Chinese business world. One large house importing machinery and frequently accepting government contracts, employs a young foreign-trained Chinese, as a liaison officer: he reads the government gazette, keeps the company up to date as to laws and the changing personnel of government; he studies the economic and industrial policy of the Government in order to be intelligent and ready for negotiations with the Government which will result in contracts for his firm; he even offers to the Government projects suggesting improvements which may ultimately lead to contracts. There is in the same company an expert engineering staff, 66 per cent of whom are Chinese. Their communication chief, who ingeniously codes all messages and is 100 per cent accurate, is Chinese. This company attempts expert management of silver exchange also: in order to stabilize its prices as much as possible, it quotes prices in silver and tries to secure itself by expert manipulation of exchange in the money market. This foreign import-export house, which has deserted the old comprador system and reorganized according to modern expert management, continues to function effectively in the contemporary Chinese business world. Its success is due to its efficiency, and that efficiency is due in part to the aid of an expert Chinese personnel.

A fertilizer company, in the region of Canton, has its experts on soil analysis who sell chemical fertilizer suitable to the particular kind of land a farmer owns, but who also demonstrate the possible use of the fertilizer as a supplement to bean cake and other things formerly used; this is done in order to prevent hostility to the foreign firm, which because of new and better products might injure the business of the Chinese companies already in the field. Here expert service is coördinated with Chinese consideration versus cutthroat competition. Again, for-

eign business succeeds in proportion to its expertness coördinated by Chinese to Chinese conditions.

On the other hand, more conservative foreign firms retain compradors to find customers and to collect last payments. A company selling machinery, for instance, will get 20 per cent down, 20 per cent when the order is accepted abroad, 20 per cent on arrival in China, 20 per cent on delivery, and 20 per cent a month or so later, after the machinery is installed and in good working order. It is the last 20 per cent which is difficult to collect; here the comprador is valuable. Foreign banks also retain their compradors, who are responsible for the Chinese clerks. They are also indispensable for the reading of Chinese signatures, and for passing on Chinese credit paper. Compradors are retained even in modernized business when they have a real service to perform. But business in China must be done along modern expert lines or it fails as inexpert business everywhere fails in competition with the expert. Young foreign-trained Chinese are importing knowledge of modern business methods. The old import-export house is doomed because it is out of date, unless it mends its ways and fits into a developing economic world which is Chinese.

Reported decline of foreign business in China which is the complaint of the long-established foreign banks and foreign import-export houses, is in reality due to the shifting of business to other agencies. Export-import figures for China have made a good showing in spite of the chaos incident to civil war, and in spite of the depression in the value of silver money. The fact is that just as the long-established foreign banks have felt the competition both of the small foreign banks, which are much patronized by the Chinese, and of the modern Chinese banks, just so the long-established import-export houses have felt the competition of direct buying of Chinese from abroad. This direct buying from the foreign manufacturer, which is hurting the business of the old export-import house, is being done on a large scale with the aid of the banks and through the manufacturer's representative in China. It is succeeding because it is proving financially advantageous to the Chinese merchant. The Chinese have always been clever merchants. The contemporary Chinese merchant may be a returned student with knowledge of

modern business and modern business procedure, or he may have learned expert purchasing methods through the local modern banks. The Chinese merchant is, therefore, no longer in need of the old import-export house as the only go-between for him in foreign trade. The Chinese merchant is constantly becoming better and better informed in finance and the world market. His knowledge of what to buy and where to buy is greatly assisted by the presence of the "manufacturer's direct representative." An agent who represents just one firm or one line of goods—as for example, the Burroughs Adding Machine Company or the Burroughs, Wellcome & Company's drugs—may not be a serious competitor to the old import-export house; such competition is serious only when it succeeds in diverting a large accumulation of business. The "manufacturer's representative" proper has miscellaneous samples—perhaps six to eight hundred lines, including competitive brands—which he keeps up to date and exhibits to advantage. Having examined samples and chosen his goods the small dealer buys direct from the manufacturer instead of through the import-export house. If possible the dealer sends a draft, or a letter of credit with the order. The transaction is a cash transaction, the Chinese saving the overhead charges of the importing house. The loss of monopoly, and the continued curtailment of business which is experienced by the long-established trading company, is due to newer methods of business adjusted to changing conditions in the Chinese business world which, as has already been indicated, are due to developing banking facilities and to increased knowledge of business management on the part of the Chinese themselves. If the Chinese merchant cannot himself finance direct business, he may employ the Chinese or foreign importing house which can. Since for some time to come the Chinese can have only inadequate knowledge of the foreign market, and inadequate credit resources, the foreign importer, for those reasons if for no other, will continue to have place in the Chinese business world. The Chinese importing house has real opportunity for development, however, because the foreign manufacturer is desirous of employing Chinese to purchase his goods and sell them to Chinese distributors in the interior. Thus, there is need for import-export houses, Chinese and for-

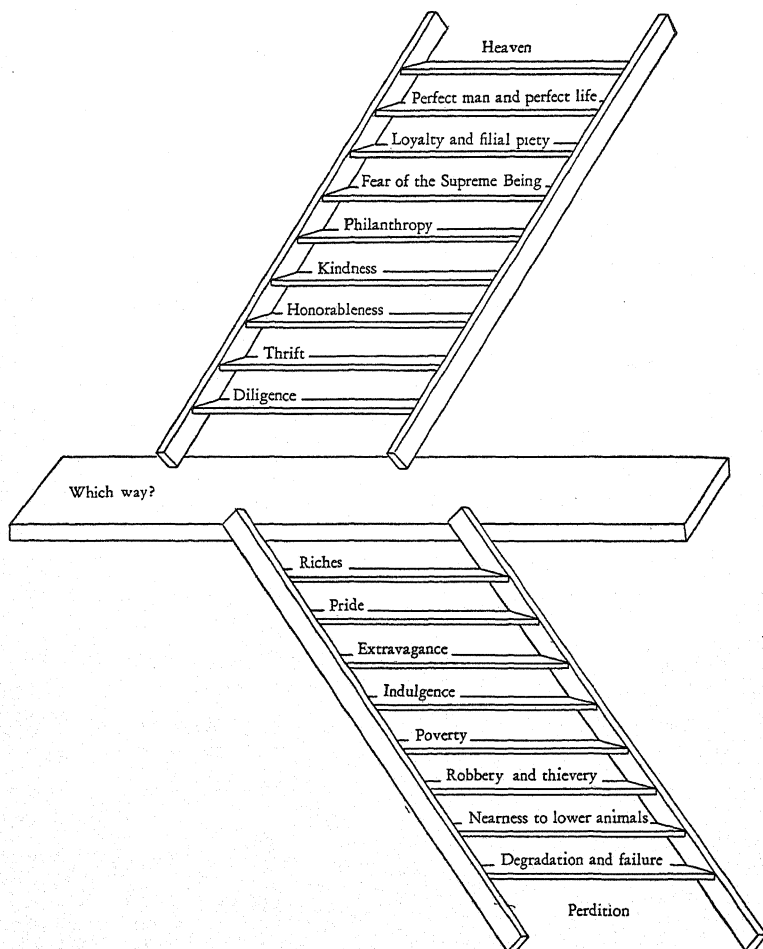
sign; both are needed to assist the local small buyer and seller, especially if he cannot pay cash in advance, but must purchase on delivery or after arrival.

When all is said and done, economic forces and modern business practices determine prosperity or the lack of it in any line of business; there seems to be no direct influence upon the process that can be attributed to the existence of, or to the threatened abolition of, extraterritoriality.

The new Chinese houses doing creditable importing on a large scale are interesting. They frequently serve foreign companies, especially American, as distributing agents throughout large areas of the interior; they do importing and exporting on their own initiative. One of these was originally a German firm which took in Chinese as junior partners; through training and experience the Chinese have become efficient managers and owners of the company. They maintain an efficient and loyal group of employees by paying wages which, though small, are adequate to their needs, and by giving them bonuses at stated intervals for faithful service. Their godown, carefully managed, is made the rendezvous of merchants from the interior, from whose goods they select the best, securing first grade for export. Whether in imitation of Rotary and other clubs boasting high standards of business conduct, or evolved out of their own idealism and for their own purposes, they have a directors' room quite unique in character. Built on the roof of a godown, it has windows on three sides, and, on the fourth, three simple altars: one to the God of Commerce, one to their founder and his assistants (foreigners), and a third to colleagues who had made real contributions to their business during their short lives. This congregational hall for staff meetings has the motto "Loyalty and Righteousness" over an arch opposite the door; supporting pillars facing the entrance have business proverbs in sharply cut relief characters. One post says, "Business done justly, unselfishly, will last like Spring and Autumn," the other, "Business done in the proper way will last like the sun and moon, forever." At the left a long mirror is framed with admonitions: across the top, "Put your heart right"; on one side, "If you always use your heart as a mirror you will get blessings"; and on the other, "If your heart is right, looking in the

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mirror you will feel no shame at your image." On the wall at the right is a picture of two ladders—one leading up to success, the other leading down to failure. Starting from a platform in the middle each reads as follows:



All these exhortations and their four watchwords—carefulness, diligence, faithfulness, and loyalty—are the decorations of a shrine to the God of Commerce dedicated to their own business honor and success.

Another large Chinese import-export house is one of three closely related institutions. One of these is the first Chinese bonded warehouse in that part of China; it and its branch units are immaculate and systematically managed. The record of goods carried to the upper floors or of goods brought down for delivery is not kept in writing, but, for workmen who cannot read, notched sticks are deposited in racks as fast as a bale is carried in or out. A few such modifications to fit local conditions give local color; the warehouse management on the whole conforms to western practices; in fact it is quite model. The other institution with which the import-export house is affiliated is a bank. The import house carries its \$120,000 capital with this bank as margin for the purchase of goods for itself or customers. Through the three related institutions an import-export business of large proportions is being conducted by junior members of the firm. The business manager is a graduate of the University of Illinois, the assistant manager was trained at the Graduate School of Business, Harvard University, the import manager is a Purdue man, and the chief accountant comes from Columbia University. They also had, in their employ, one young American, graduate of the Harvard School of Business, serving his apprenticeship in this Chinese firm.

Yet even this firm with its foreign-trained staff has its difficulties with the export business comparable to difficulties complained of by foreign firms exporting to China: it is difficult to locate a dependable agent abroad; it is also difficult to know the standing of the buyer; prices may drop after goods are shipped and it is not only difficult to get payment, but it is almost impossible to collect claims. Moreover, there are always controversies over the quality of the goods. When cotton is exported to London, if the price drops, the London exporter will say it is not standard quality. This is also true of walnuts and peanuts, as well as cotton, which are purchased from the

interior and shipped in large quantities. Adequate standardization of goods may be more possible after longer experience and with the aid of the government standardizing agencies now being developed under the Ministry of Commerce and Industry.<sup>5</sup> But even with carefully selected merchandise the Chinese exporting house must have someone to represent it before the cotton men's association or the vegetable men's association, which are supposed to judge standards and prices on the merits of the case. It takes a large, financially strong business to meet these demands in export trade. For that reason there are not yet many Chinese firms which can do it. Specialized businesses with long-established foreign clientèle, do well and gain in strength and size, but in general the export business owned and managed by the Chinese is as yet negligible in the active fields of competition. The Chinese are much better adapted to the business of importing and distributing to their Chinese clientèle. Thus, the foreign export house, knowing the occidental market, will probably continue to have a place in the mercantile life of China, even though the monopoly over Chinese trade once enjoyed by the foreigner is broken.

These institutions of foreign enterprise in China have lived and prospered within areas which have been under foreign jurisdiction, whose privileges and exemptions are now under attack. Modern Chinese banking and modern Chinese business, which are competing successfully with foreign business and foreign banking, and which are upsetting the *status quo ante*, have developed within the same concession areas where foreign jurisdiction has protected foreign business. Few have developed outside. Within the areas they have been free from irregular or confiscatory taxation which Chinese business and industry outside the foreign settlements suffer from time to time. So long as concessions are allowed to continue, business, foreign and

5. Testing Bureaus, now functioning in Shanghai, Tientsin, Tsingtao, and Hankow, are quite effectively standardizing raw silk, raw cotton, and wood oil. A chemical laboratory in Shanghai has been established for the testing of animal products. This can be made efficient only after much education of the local dealers through their guilds, and after it becomes possible to eliminate modification of the scientific tests in the interest of family or friends who may be submitting goods. The intention of the Nanking Government is that all goods shall be standardized by scientific apparatus and that the results shall stand.

Chinese, can function under foreign police regulation in self-governing or foreign-governed units created for the protection of foreign business; so long as extrality lasts, business, foreign and Chinese, within those areas, may not be taxed by the Chinese, nor may foreign business be sued in Chinese courts.

Before making any further comment upon this anomalous situation, it is probably wise to learn something of foreign business methods which are especially successful in contemporary China. Then we shall be in a better position to evaluate the bearing of extraterritoriality upon business contractual relationships in China today.

## CHAPTER V

### FOREIGN BUSINESS METHODS WHICH ARE SUCCESSFUL IN CONTEMPORARY CHINA

**B**USINESS practices of the last decade that have been successful in the face of annual wars and continuous banditry are the outstanding achievement of recent foreign business in China. The fact that extensive distribution has been carried on in the interior of China during years of generally chaotic economic conditions, instability, and civil war is almost a wonder in modern commerce. It is well known, for example, that kerosene oil, cigarettes, and soap are being sold in remote regions where the foreigner can seldom go, and beyond areas open to foreign residents. This situation, remarkable as it is, is not always looked upon with unqualified approval; these businesses aggregating millions of dollars a year, in an area whose economic vitality is said to be gone, are the objects of both praise and blame—blame, because they continue to draw out the few remaining resources when the area needs every cent for the reconstruction of local industry. This phase of the matter is skilfully presented by Nathaniel Peffer in *China, the Collapse of a Civilization*.

The extraordinary successes of foreign business enterprise seem to belong to businesses that do their own distributing through their own representatives in China instead of through an import-export house. Obviously, their success is due partly to elimination of the cost of the middleman, which means that they can sell to Chinese at a lower price than would otherwise be possible. Furthermore, it is a great advantage from the standpoint of business management that they have agents in the field who are trained in their own expert methods of salesmanship, which must be more effective than the salesmanship of an untrained comprador of the import-export house, who may, indeed, have other commodities whose distribution is also his concern. But more important still is the fact that their repre-

sentatives have expert knowledge of Chinese life—political, economic, social; they often speak the Chinese language; they have had experience living in the interior as well as on the coast. Business efficiency methods of the West are as advantageous in China as elsewhere. Success in China requires all that, yet it requires more. Success in China means understanding China and the Chinese; it means knowing Chinese methods, having insight into Chinese psychology, and recognizing their traditional ways. That business is successful in China which can utilize the best technique in its own management, and can at the same time dovetail modern methods for the selling and distribution of a particular product into the customary Chinese ways of distributing and merchandising.

Selling soap into the interior, for example, was not only a problem of selling and collecting payment; it offered, first of all, the problem of creating a demand for soap in the land where advertising "that schoolgirl complexion" was folly, and when most advertising through the printed page was useless because of illiteracy. The American representative of this company investigated methods already in use among the Chinese; he early learned that there were Chinese residents in Shanghai and other ports who bought for jobbers in the interior, and that these buyers would not only purchase what was ordered but would often introduce other things they thought might sell. If these buyers became interested in any commodity, either through friends or because the product was well marketed and popular at the trading center, then they would introduce the goods to the inland jobbers. Through the distribution of samples in the treaty ports, therefore, "Palmolive" became better known than any other brand, and it also became popular. One clever and enterprising scheme was the lease of an amusement park for three days. Admission fees were charged as usual, but with the admission ticket each person was given a cake of soap which he might take home as a souvenir. Thus, the illiterate as well as the literate public was reached. In consequence of such advertising, jobbers who became interested sent a dozen or more cakes with orders here and there into the interior. Moreover, small dealers themselves, who came to the

ports in junks, also became interested in the new product through local dealers who were their friends; these traveling dealers, in turn, carried sample orders with them when they went inland. Thus, by native ways, small orders, transported up the rivers in sampans, reached remote places. As buying increased, a distribution system was elaborated to supply this growing demand; through this marketing system companion products found their way to the interior.

Although purchases may still be made through native channels, there are now important Chinese firms in treaty ports who are agents, and from whom native dealers may buy direct. This agent is chosen because of his good standing, which is learned through the local bank or through persons well known to the foreign company's representative. Goods will be sent to this agent, if he is in a place, for example, like Tientsin, after he has opened a letter of credit with the National City Bank, or with any other foreign bank through which the foreign representative deals. Of course, he may buy for cash through a draft, or, if his reputation merits it, goods are sent "D.P.," which means he pays for the goods when he receives them. (The company accepts no protest for nondelivery or nonpayment; it holds the agent or jobber responsible for goods after shipment.) Perhaps, if the agent is of very good standing, he may be allowed to take the goods on a trust receipt payable within fifteen, or even sixty, days. Beyond this agent, the firm extends no credit. These treaty-port agents sell to wholesalers in the interior. The Chinese distributors have their own ways of learning the credit standing of their customers; they use whatever credit methods they choose. The stronger agents in larger places treat their wholesalers very much as they are treated. This, of course, is possible only when there are modern banks, Chinese or foreign, through whom the wholesaler may deal. Beyond the wholesaler, the methods of selling and the extension of credit are according to local Chinese practice.

Transportation charges and taxes are usually paid by the purchasers. Sometimes, to agents in the larger ports goods are sold "C.I.F."—the price covering cost, insurance, freight—but usually, after the company pays import duty and wharfage, the

agent pays the transit and whatever additional taxes there may be. The wholesaler, in his turn, pays provincial levies that may arise. Even the local small dealer is responsible for all charges after he has purchased from the wholesaler.

In the last analysis, the business is a cash business, between the company and the second party, the Chinese agent. Distribution into the interior is in the hands of Chinese business men already there. The contribution of the parent company to this local business in the interior is through frequent visitation of the local dealers by the Chinese manager of the company or by its salesmen especially trained in the company's methods. Moreover, these foreign-trained Chinese salesmen can go where no foreigner could venture and can deal with the Chinese as only Chinese know how. The salesmen often discover competing imitations, which they can trace to their source. With adequate data thus gathered, successful prosecution is possible under the present law; conviction is nearly always certain. Efficient salesmanship, alertness for opportunities for new business, prompt action against unlawful competition, all these mean that efficiency methods of modern business are translated into the Chinese environment; they supplement the customary Chinese methods of dealing with each other. When all is said and done, the balance sheet—in seven figures—of the Chinese branch of one American company testifies to the success of these methods of selling and distribution. From time to time this company has had outstanding indebtedness of from one hundred to one hundred and seventy-five thousand taels; in the last nine years, however, there has not been one copper lost in any account with a Chinese client. At present, moreover, the entire staff, excluding the manager in chief, is Chinese.

Another company, with a product equally novel in Chinese shops, can boast an equally remarkable balance sheet. Raisins, like soap, were introduced to the local small dealers and a local demand was created. In this instance, however, the method was not, like that just described, the manipulation of a distribution system already in existence; it was, instead, the introduction of the new product to the small shops by Chinese salesmen trained by the company to place a sample allotment

and demonstrate methods of introducing a new commodity to the customers, perhaps by sampling, perhaps by explaining its usefulness. The Chinese representatives of this foreign company taught the Chinese the use of a foreign product; through western methods of salesmanship they demonstrated its uses in a Chinese world. In other words, expert salesmanship—not only by the company, but through their agents, who taught, continuously followed up, and retaught the local small dealers—was the secret of successful distribution of an alien product throughout the interior of China. The machinery of distribution was developed as soon as a demand was created; within a definitely worked area a wholesaler would be found who would become distributor for that territory. This process was repeated until an extensive market was created, and an extensive distribution system established.

Wholesalers chosen to be the distributors of this product to the local dealers are men of established reputation in their local districts; the record of the local dealer is investigated and vouched for by the Chinese local representative of the company. The wholesaler, when accredited, can buy from Chinese distributing agents in the treaty ports; these distributing agents are responsible for the credit extended to the wholesaler. The company sells to the distributing agent for cash or on letter of credit, or D.P. documents; whatever the method of payment, it is always a cash transaction in the first instance between the foreign firm and the Chinese distributing agent. The contribution of this company to its distribution organization is its visiting Chinese representative, who advises the dealers in salesmanship; from time to time he weighs cartons to be sure purchasers get full value; his purpose is to see that business is conducted profitably to all concerned.

These seemingly simple systems of selling goods to a Chinese distributing agent on a cash basis, leaving further distribution entirely in the hands of the Chinese, could be duplicated many times with slight variations; it is used in the automobile business, in the tire business, and in many others, including the more intricate variations of the British American Tobacco Company, the Standard Oil of New York, and their competitors.

The B.A.T. and Socony, however, have been longer established than other companies; their representatives have intimate and extensive knowledge of local conditions; these great organizations, moreover, were the pioneers and defined practices. At least this is their reputation among the Chinese, who give them credit for having evolved model methods which are beneficial alike to the Chinese and to the foreigners, and so well adjusted to Chinese conditions that they are there to stay. This is probably true until, or unless, the Chinese shall be able to undersell them in open competition.

In describing the methods of any one of these companies, a few variations from the general scheme may be noted. One company, for instance, has representatives stationed in every Chinese city open to foreign residents. These men observe, advise, and report upon conditions in the neighboring areas through which they travel. Through information gained from local Chinese Chambers of Commerce, local agents are chosen, who, because of their good reputation in the Chinese business world, become the wholesalers for their districts. Since a wholesaler often receives consignments of goods in excess of cash he can pay or guarantee, he may be given an extension of time—a fifteen- or thirty-day credit. He is expected to pay for one consignment before he gets another—in any case before he gets the third. At the beginning, however, the agent must offer security for credit which may thus be extended to him: he deposits cash, or title deeds, if he has them, and, in all probability the shop guaranties of his friends who have long-established businesses in the town. Yet, even with all the guaranties he is able to advance, the consignments of many a wholesale distributor may be in excess of his security; in which case he is doing business on credit of the company extended to him by the company. This company extends credit beyond the wholesaler, even to the dealers, if the distributing agent gives his approval. In order to control this extension of credit, which is practiced by tobacco and oil companies alike, simple contracts are made which provide for the payment of goods within two weeks. If at the end of two weeks the dealer pays for the goods he has received, he may have more goods on another fifteen-day credit. The

turnover is profitable, and the dealer pays in order to retain the privilege of being the local dealer. The wholesaler is likewise under contract to pay for the stocks in his godown in order to replenish his supply. For the purpose of having an adequate supply of merchandise for a district the company may have its own godown, which in oil would be a storage tank. This, if it is in the interior where foreigners may not reside, will be owned and managed by a Chinese. Here, the credit involved will be greatly in excess of any guaranty he can offer. These large companies, therefore, have extensive credit relations with Chinese special agents, distributors, wholesalers, and dealers. The attempt is made, on the part of the most successful companies, to keep credit contractual relations within three parties: the company, a distributor, and a dealer; or, the company, a special agent, and a dealer.

The companies vary in methods of supervision. In one case a Chinese salesman who is the company's representative in the district and is responsible for watching the business conduct of customers—a man known to the company as their "trouble agent"—reported that a big distributor in the city of Peiping needed watching. A \$12,000 order for the distributor was, therefore, consigned to the "trouble agent" and released to the distributing agent only on cash payment until the agent's books were properly audited and the business reestablished on a sound basis. Another company has a regular monthly report sent in by its representatives in every territory; this concerns costs, sales, competitive brands and prices, copper exchange and consequent prices. On the basis of these reports it is possible to determine quantities, prices, and policies that will keep the business profitable to the dealers, and, ultimately, to the company; the theory being that, if it is always a financial advantage to hold a dealership, it will be possible to require from dealers systematic payment for merchandise as a condition of their retaining the privilege. Profitable business, rapid turnover, prompt payment, mean good business to the company. Through such devices—expert business management and systematic payment arranged through simple contractual relationships—definite business practices are being introduced into the interior.

The methods of these big companies, together with those of the modern Chinese banks, are engrafting modern businesslike procedure onto native ways, and gradually making for their transformation; at least, this is the opinion of young Chinese banking experts.

If at any point in this network of distribution, credit or payment breaks down because any of the parties have not lived up to their agreements, matters are for the most part, especially by the largest companies, adjusted between the parties concerned. If the distributing agent, for example, has had many losses because his dealers have not paid, and he, in turn, is unable to pay, his guarantors may be asked to meet the obligations. One guarantor and then another may, by compromise, agree to sums each is willing to pay to meet the losses, and for their release as guarantors. By local procedure—by means of a committee of the local Chamber of Commerce, or, perhaps, through a local guild organization, not through the courts—these losses are adjusted. The agent is reestablished with new guarantors, or a new agent is chosen and properly guaranteed. For disciplinary purposes, in case of too numerous failures to pay, the delinquents have, more recently, been taken to the Chinese courts. Only the less experienced companies, however, resort to court procedure as the ruling practice. When they do, you may hear stories of obtaining justice, only, or especially, when a judge has become interested in the company or its cause; this may have come about because a financial gift has been made to the judge for a local school or institution which the judge may think worthy. By such means the foreign company becomes somewhat identified locally. Court procedure, however, is not in general wise or profitable because it brings disgrace, beyond the needs of the case, upon the defaulter.

Accurate figures concerning the losses of the companies doing such extensive business throughout the interior are, of course, not available; the general statement of one company may, however, assist us to estimate conditions: that company doing business of a million dollars a month estimates its annual losses at 3 per cent or less. It is generally understood that losses of similar companies in the course of ordinary business are not

large, sometimes less than for the same volume of business elsewhere.

Losses there are, however, which are outside the business contractual relationships; they are due to looting which results from the lack of settled government, from banditry, or seizures of property by *de facto* military rulers. If confiscation of merchandise occurs *en route* to the interior when military generals are in the field, claims for the losses are made to the Nanking Government. Occasionally, as in Szechuan, when a rival military general established his power, the goods confiscated were paid for by the general as proof of the merits of his sovereignty. Such vagaries have their interesting, even amusing phases, if one can forget the disastrous effects of the consequent instability. Perhaps the most surprising is the episode which occurred between Tientsin and Peiping in the year 1930. For some time it had been very difficult to send goods into the interior, but, on the assumption that one general was winning or about to win, many cases of cigarettes were loaded onto boats which were to be towed up the river, following the victorious general as he should go inland. Contrary to expectations, however, this general met reverses. When his army retreated, the boats carrying cases of cigarettes were seized, the cases were dumped on the shore, a pontoon bridge was made of the boats; the army retreated across the river and down the other side. The pursuing army crossed the same bridge. After both armies had gone, the boats were reassembled as a freight fleet, the cases of cigarettes loaded on again; all this without the loss of one cigarette. The flotilla proceeded to the interior, for there were no generals to obstruct.

Another problem involved in this uncertain business in the Chinese hinterland lies in the excess charges for freight cars or transit fees which cannot be re-collected from the Nanking Government because the Nanking Government may not be the sole authority in the area where the excessive charges are levied. These charges, which are virtually a surtax, must be borne by local dealers; the total, added to the cost of the goods, is recovered by the dealer, who raises the price of the goods he sells sufficiently to cover his losses.

In the matter of taxes, also, there are frequent difficulties. A definite import tax on oil has been agreed upon with the Nanking Government which is paid by the company. This is supposed to end the matter of taxation, but when the control of a region by Nanking is disputed, extra provincial taxes may be added, or a rival military general may levy his toll. Whenever this happens the Nanking Government is asked for a refund by the company; but if this is not forthcoming, then the distributor in the interior must recover the amount of the tax by raising the price to the dealers to such a figure as shall reimburse him for the extra levy he has paid.

The tobacco companies do not pay an import duty once and for all; instead, they have negotiated with Nanking for a consolidated tax which shall be paid directly to the National Government; this is collected as a stamp tax. The agreement is that the consolidated tax shall replace the numerous taxes formerly levied throughout the interior such as *likin*, dike and canal taxes, tolls, *octroi*, school tax, destination tax, etc., *ad infinitum*. The consolidated tax has been agreed upon for the mutual advantage of Nanking and the tobacco companies.<sup>1</sup> This, as a stamp tax, is paid at the source directly to the Nanking Government, thus eliminating wastes and costs incident to the collection of the many dues which formerly delayed transit and increased the cost of merchandise excessively and unevenly. Under those conditions it was impossible to maintain a sales price that was either reasonable or stable, and impossible for Nan-

1. These methods—the special import tax and the stamp taxes on tobacco paid directly to Nanking—by which foreign business would survive in China are extramural, so to speak, the wall being the treaty safeguards. Mr. Grover Clark's interpretation of these tax arrangements is one that can readily be made; it serves various political purposes of the Chinese and of foreign companies as well. A brief statement of his point of view is as follows:

"In making these agreements which provided for payments of taxes entirely outside and in excess of treaty requirements, and in taking no steps to put the agreements on record with the legations, these companies in effect and as far as their business was concerned abolished the extra-territoriality treaties and the treaties limiting China's right to fix her own tariff. The companies in effect said they would do business in China on the basis of Chinese law and custom and in ways acceptable to the Chinese—without relying on any 'special privileges.'"

I grant that the special arrangements under discussion are "entirely outside of any treaty provisions," and that, in effect, they can be interpreted as "a definite repudiation by these companies of the treaties." Nevertheless, I should say,

king to count on a definite income after all the local parties had taken their fees. The method of the consolidated tax has proved to be so valuable to the Nanking Government that a Consolidated Tax Bureau has been created and stamp taxes are levied upon matches, cotton yarn, and flour, as well as upon tobacco and cigarettes. In the winter of 1931, however, the consolidated tax area did not include Manchuria, Shansi, Shensi, Szechuan, or Honan; if goods were going to these provinces the Nanking Government granted a free pass; the merchandise was then subject to special provincial taxes; in Manchuria, only, is the tax in the form of a stamp tax as under the National Government.

Having described at some length marketing methods for large-scale distribution, managed by branch offices of the home company, we may be in a position to estimate how much such businesses and their business relationships depend upon the guaranties and protection of extrality. In the distribution of soap, raisins, tires, automobiles, where no credit is extended to dealers in the interior, business is on a comparatively simple cash basis between the well-accredited Chinese distributing agents at the treaty ports and the company itself, through its own representative or through its branch office in China. In such a relationship there can be no occasion for appeal to consular jurisdiction; it is entirely a matter of transfer through bank paper—drafts, letters of credit, documentary paper of one kind or another; it is cash on delivery.

Where credit is extended the situation is less simple. In this case business is very much a part of local conditions; it becomes necessary to gather knowledge concerning what is going on in

rather, that the special arrangements were quite Chinese in character: they were adjustments to circumstance; they were methods of dealing practically with the immediate situation which is necessary to business life in China. From my knowledge of the point of view (in 1930-31) of important representatives of the leading companies in China, I doubt that the companies either cared or assumed to repudiate treaties. Perhaps this different estimate of the attitude of the companies is due to the new issue raised by the Chinese Government concerning the registering and consequent taxation of all foreign corporations doing business in China. (See below, pp. 87-88.) In time the big companies may find some satisfactory way to adjust this matter directly with the Chinese Government which will be as mutually advantageous as are the tax arrangements. To the present, however, this has not been done: the existence or, better, the *status quo* of foreign corporations in China rests temporarily upon treaty safeguards.

the interior, to solve the problem of extension of selling in remote regions, to ascertain the character of dealers and business relationships. To meet this necessity a certain firm has created a parallel Chinese company, as a competing company.<sup>2</sup> This native company buys its goods from the foreign company and reports conditions of competition and price to the parent company. The intimate knowledge of local conditions, thus gained through the Chinese themselves, is invaluable to the original company in its dealings with its own Chinese local dealers and salesmen. But even when business is thus intricate and involved, it is rarely true that any matters come up for court settlement.

If court procedure is used, it is the Chinese court in which a delinquent Chinese is tried. Usually, however, as already explained, the local Chambers of Commerce, or guilds, are asked to aid in adjustment when agreements are not executed. For redress of grievance in the collection of excessive fees, the local dealer or agent may use his personal influence or that of his friends. If, however, the matter becomes one for negotiation by the company, such negotiation is taken by the representative of the company to Nanking, or the national's consul is invited to exercise his good offices. If the consul should intervene it would be on exactly the same basis as would be the case in any country the world over; such good offices would be within his usual duties, not by virtue of any special prerogatives under the guaranties of special treaties. In the matter of tax adjustment similar procedure is followed. In no instance, in no particular, does business throughout this extensive area rest upon special consular courts or upon jurisdiction provided as safeguards in extraterritoriality. In actual fact extraterritoriality has never functioned in the interior; consular jurisdiction has not extended beyond the treaty ports. Extraterritoriality has meant personal protection to the foreigners; at present these extensive distribution systems function through a Chinese personnel, in which case there is no extraterritorial jurisdiction possible: should one of these agents of the company act unfairly toward

2. This may prove, also, to be a method of meeting the difficulties of registering foreign corporations with Chinese authorities—the creation of parallel or subsidiary Chinese companies with definite limited capital.

any Chinese, and the matter be taken to court, it would be to a Chinese court, not to a consular court.

Should extraterritoriality go, it is difficult to see that it would mean any advantage to the Chinese selling foreign goods, nor is it possible to see how its abolition could materially harm the relationships already described. In certain particulars, however, it may be necessary to qualify these statements. In so far as it has been possible to find trained Chinese, or to train Chinese for positions of responsibility as supervisors or as representatives of the company who report on business conditions, or who are responsible for the larger storage centers, just so far are business relationships beyond any possible assistance from extrality. But all companies have not yet created a Chinese personnel, nor do they at present see fit to do so.

At present most companies and their foreign representatives say that they believe they have greater security with the treaties behind them than they would have without extrality. This security they are speaking of is really a personal security; it is something apart from the business contractual relationships. Time was when the Chinese either respected the foreigner as a being different from themselves, or refrained from molesting him because punishment would be meted out for such molestation. This old attitude persists to some degree today, but probably less than is supposed by either Chinese or foreigners. Such special privilege, which has amounted to special exemption from interference or tax, is resented by the local Chinese traders; they assert that it puts the Chinese at a disadvantage; they argue that all should fare alike or like the Chinese in China. To Chinese, therefore, the abolition of extraterritoriality means giving them a chance. But the fact is, Chinese are nowadays getting a chance; they are getting it just as fast as they are developing modern business ability. They are already manufacturing cigarettes at prices which undersell the best prices the foreigner can offer. They have projected plans for the refinement of oil in the free Chinese port of Tongkawan below Canton, which may mean real competition with the Standard Oil in the field in which it now has a monopoly. The fact is, the Chinese are succeeding by foreign methods. This success is

destined to continue unless chaos existent outside the foreign settlements shall encompass them also. It is not so much the abolition of extraterritoriality that the Chinese needs to give him business opportunity, as it is stability of his own national government to maintain peace and order.

At present both Chinese and foreign business men remain in the protected areas near the coast. Buying from the interior is done at the coast from Chinese who have been able to come from the interior in safety. Trade with the interior is clearly determined by local Chinese conditions; this is also true in relation to the safety of goods stored there. Godowns or factories outside treaty ports cannot be owned by foreigners; those owners and managers must be Chinese, although the foreign company usually assists in financing the project by making a loan which is equivalent to ownership of the factory or godown. As security or proof of that actual ownership the foreigner or the foreign company holds the title deed as his guaranty for coöperation from the Chinese legal owner. These guaranties to the foreigner are more nominal than real; treaties or no treaties, if satisfaction must be required of the Chinese collaborator—the defendant—it is within the jurisdiction of the Chinese court, with which extraterritoriality has nothing to do. In actual practice, settlement of difficulties or collection of funds would probably be made outside the court by transferring responsibility for adjustment or for collection to a Chinese. If, however, a warehouse is looted or burned in the processes of civil war or banditry, there is no redress to either the Chinese or the foreigner. In relation to the business contracts and agreements in the extensive distribution throughout China, there is no dependence upon extrality; extrality is quite external to all these business relationships.

What the foreigner needs for his security in business is not necessarily extrality. Stability on the part of the Nanking Government, if that stability should include a systematic policy of national finance, honestly administered, might be equally and perhaps more satisfactory than the present status.

If there is danger to the business of foreigners beyond the instability which affects Chinese and foreigner alike, it is the

danger that lies in the attitude of the Government toward the existence of foreign business in China. Will the Government pursue such a policy toward foreign businesses or their branch offices as shall make it possible for them to continue, or by registration taxes, corporation taxes, or the like, will the policy of the Chinese Government be such as to make it impossible for foreign business to continue?

The crux of this whole matter evidently centers in the stability of the Nanking Government, and in what the policy of that Government may be. Consequently, the next question for us to examine is the policy of the Nanking Government toward business contractual relationships.

## CHAPTER VI

### THE ATTITUDE OF THE CHINESE GOVERNMENT TOWARD BUSINESS CONTRACTUAL RELATIONSHIPS

THE matter of governmental attitude toward business contractual relationships would seem to be something upon which the Government alone has the right to speak. But in a discussion such as this in which there is a real endeavor to understand the various factors at work in a very intricate set of circumstances, it may be reasonable to attempt a description of the evidences of governmental attitudes which documents, officials, and incidents offer to the interested and analytic observer.

Some principles of action on the part of the Chinese Republic may be easily discovered by noting the official policy in relation to well-standardized matters such as patents, copyrights, and trade-marks.

In this connection the foreign lawyer may tell you that "the Chinese just entering the industrial world have no morals." In reply the Chinese will tell you that the lawyer is the greatest obstacle to their program for change and readjustment; the lawyer, they say, insists upon rules suited to things as they were where he came from, or as they would be if China were one big concession. The status which is desired by the lawyer would, of course, mean continuance of special privilege to the foreigner in China, which is exactly what the Chinese are trying to eliminate. This difference in point of view is, by the way, only another indication of the chasm existing between the two sides of the controversy over the abolition of extraterritoriality. Setting this aside, however, it is possible to discover principles of action on the part of the Nanking Government. Their policies do not always appear to be consistent, but if we will note quite objectively the present Chinese treatment of the usual safeguards—guaranteed patents, copyrights, and trade-marks—we

shall discover that behind it all lies one consistent endeavor, namely to pursue such policies as shall serve the vital interests of the Chinese.

A Chinese law promulgated by order of the National Government, June 18, 1928, has interesting significance; it is entitled, "Provisional Regulation for the Promotion of Industrial Manufacture"; and the first article reads: "Anyone first inventing an industrial article, or method of manufacturing, or special improvements, or who successfully adopts and applies foreign methods of manufacturing articles, may apply to the Ministry of Labor and Commerce for encouragement." The meaning of this article of the latest Chinese Patent Law may be ascertained by looking at "The Provisional Detailed Regulations for the Promotion of Industrial Manufacture." According to these "Provisional Detailed Regulations"—which are often appended to the law as promulgated—we find that applications for "encouragement," as described in article one of the law, are limited to persons of Chinese nationality; and according to article thirteen of the same regulations, if anyone should infringe or injure the rights of this Chinese patentee, "the patentee may claim damages according to civil procedure and may petition the Ministry of Labor to restrain, and confiscate the infringement."<sup>1</sup>

Thus, it appears that the law authorizes the adoption and application of foreign methods of manufacture; it gives no protection to foreign patent holders. In brief, foreigners have no patent rights in China. Should a foreigner ask for a patent, the Chinese would probably say they have not yet promulgated a patent law applicable to the case—such, in fact, is frequently the answer nowadays to questions relating to matters impinging upon legal regulation. A recent incident in Canton illustrates the working of this policy. A Chinese returned from abroad with an imported article which he took apart and copied; he advertised the fact in proof of the merit of the article; he did a thriving business. When a protest against this practice was registered with the Chinese Government, because it injured the

1. *Shanghai Evening Post*, August 21, 1929.

sale of the original article, the Ministry concerned said it could do nothing for there was no patent law that applied.

When asked for an explanation of this practice, a member of the Ministry of Industry and Labor replied: "If we allow foreign patents to be registered in China the Chinese will be at a disadvantage; unless the Government gives this kind of aid to Chinese, they will have no chance when others have such a good start in the industrial field." The law as it stands with its supplementary detailed regulations, is a deliberate attempt to prevent foreign monopoly in the Chinese market. To the western point of view, this appears only as a nullification of international patent-right practices intended for the protection of patented articles wherever produced; to the Chinese point of view, it shows only an intention to facilitate the development of Chinese manufacturing industry carried on by Chinese.

In the matter of copyrights the situation is somewhat similar; according to article fourteen of the "Detailed Regulations for the Enforcement of the Copyright Law" as promulgated on May 23, 1928, "Chinese subjects may be at liberty to translate and print translations of foreign books when especially prepared for use by the Chinese people."<sup>2</sup>

An official defense of this provision explains that under international copyright agreement it would be necessary to pay a royalty to the copyright owners, and that this would make the publications too expensive for Chinese to buy. Especially is this true since many royalties must be paid in gold, which would increase the already burdensome fee threefold or more, depending upon the rate of exchange. The price resulting would make impossible any Chinese editions of western books. From the governmental point of view it is important that the Chinese have the benefit of foreign books. The educational advantage of cheap Chinese translations has outweighed their respect for customary guaranties in these particulars. It seems to be difficult to help the Chinese people without the infringement of customary guaranties, according to occidental practice. The official choice has been made in the interest of helping the Chinese people at this stage in their development.

How far that choice—how far policies based upon it—will carry Chinese away from principles and practices held by foreigners to be fundamental to the social order as now conceived, it is not possible to foresee. The difference of opinion over the principles involved—vested interests versus the general good—may be due to the fact that two orders of society have met which differ in fundamental principles; it may be that two civilizations have met which are at different stages of development. If the latter is the case, if the Chinese consider themselves behind in the race, a long period of readjustment on both sides may be necessary before the Chinese conform to already established practices. This lawlessness in regard to patents and copyrights was practiced by the United States in the early part of the nineteenth century, when she was young industrially, and by Japan, for the same reasons, at the beginning of the twentieth. However that may be, here are Chinese concepts and practices which, at present, are at variance with occidental legal standards. Such matters do not come under consular jurisdiction; if special test cases arise they must be taken to the Chinese court because the grievance will be against a Chinese. The whole matter is now untouched by special extraterritorial privileges. There is, therefore, nothing in these particular relationships that is or can be modified one way or the other by the retention or the abolition of extrality. They are interesting because they reveal fundamental principles of action on the part of the Chinese Government.

In the matter of trade-marks China has conformed more nearly to western usage. The law is vague in some particulars, and there are some recent modifications in the new law of 1930 which increase uncertainty: the penalties have been removed from the old law (Articles 39, 40, 41), the explanation being that said penalties have been included in the new criminal code (Articles 268, 269, 270). The wording of these sections in the new criminal code is as follows:

Article 268: Whoever with intent to defraud counterfeits any trade-mark or any firm name used as a trade-mark, whether or not such trade-mark or firm name has been registered, shall be punished with im-

prisonment for not more than two years, in addition to which a fine of not more than three thousand yuan may be imposed.

Article 269: Whoever imports, sells, or exposes for sale any article which he knows to bear a counterfeit trade-mark or firm name used as a trade-mark shall be punished with imprisonment for not more than six months, or detention, in addition to or in lieu of which a fine of not more than one thousand yuan may be imposed.

Article 270: Whoever commits an offence under this Chapter may be deprived of his civil rights in accordance with the provisions of Articles 57 and 58.

Here, according to legal comment, revision appears to have been made by those who do not have detailed knowledge of the particulars of cases involved. If the new wording proves to be inadequate, it may be possible to have it amended; there is no proof that the modification of this law is due to the same intent that seems clearly to govern the patent and copyright laws.

The trade-mark law, originally made under the Peking Government in 1923, was taken over with certain amendments by the Nanking Government in 1927. Up to January, 1931, the law worked well; it had been possible to stop numerous imitations, especially of labels and containers. The courts were very fair; indeed one lawyer, specializing in such cases, can make the surprising assertion that he never lost a case against infringement of the trade-mark law.

The government order of October 25, 1927, for the registering of trade-marks and trade-names provided also for the registration of all trading establishments in Nationalist territory with the Bureau of Registration under the Ministry of Finance. Here again it is necessary to look to supplementary articles or detailed regulations for the enforcement of said law in order to ascertain its full content. According to article six of "The Supplementary Articles to the Provisional Rules and Regulations Governing Registration of Companies and Corporations," the registration for each branch office or shop shall be \$10.00 plus \$1.00 stamp duty. According to article eleven of the "Provisional Rules and Regulations," if the head office of the company is not located within the Republic of China, the registration fee for the first branch office or shop shall be calculated in

accordance with 50 per cent of the total authorized capital of the company. The branch office or shop with its own specified capital, however, shall pay the fee in proportion to the amount capitalized.

Up to the present a few branch offices are registered as a matter of record; as yet there has been no registration of main offices of foreign firms or corporations. In the first place it is almost impossible to allocate capitalization for the Chinese branch of a business; and even if that were possible the tax is excessive in comparison with similar registration fees of foreign companies in other nations. Moreover, there is uncertainty as to whether the tax is to be paid on registration or annually. There have been rumors that registration of a firm might involve its becoming a Chinese corporation; the regulation for Chinese incorporations is that 51 per cent of the shares must be held by Chinese. Furthermore, certain requirements to be exacted from registering firms would nullify their status, as yet safeguarded within extraterritoriality; a corporation registered would be open to inspection by the Chinese; which is only another way of saying that firms registered would be brought under Chinese law, Chinese regulation, and Chinese taxation. To the Chinese this is but logical if and when they are sovereign within their own borders. When the foreigner objects that this would deprive him of the security he has enjoyed to the present under his own consular jurisdiction, the answer is that the Chinese have not enjoyed security; why should the foreigner expect to have security which the Chinese themselves do not enjoy? To the Chinese this insistence of the foreigner upon protection of life, liberty, and property, to which he has been accustomed at home or within foreign concessions and under treaties exacted from the Chinese, appears to be a demand for an unfair advantage. "Remove extraterritoriality and put all under the same conditions, the law of the land," is the demand of the Chinese. Here is nationalism and in one sense democracy; how much socialism is intended it is impossible to determine. Here, at least it can be asserted that the Chinese are working out the Principles of the Revolution. It may be that here is an attempt on the part of the National Govern-

ment, by imitating western practices, by gaining control of corporations, and by securing augmented income through taxation of prosperous foreign firms, to be sovereign in China whether extrality is formally removed or not. If they succeed, extrality is nullified. Suppositions aside, however, there is at present uncertainty to business because of the vagueness of the law; there is no knowing what interpretations or "detailed regulations" may be appended thereto. There seems to be uncertainty in the minds of the Chinese as well as foreigners; officials, even, concede it to be "a delicate matter, one not yet fully determined." May it be that acquisition of the power to tax foreign business, may really mean the power to destroy it? That, at any rate, is the fear.

Unquestionably, the commonly discussed matter of personal security under the abolition of extraterritoriality is no more important than the policy of the Chinese Government toward the existence of foreign corporations in China. Illustrations may indicate the possibilities to business and property under present circumstances. In Shanghai, in the native city, a small prosperous manufacturing business, registered under the Ministry of Finance, found itself taxed, in 1931, to the extent of \$25,000. This was more than the annual profit; its prosperity had been greatly overestimated; this levy would tax it out of existence. Eagerness for present income seems to ignore the results to business, and to future government income. So far, this destructive taxation shows little deliberate purpose of a socializing nature, unless the projects for the new Special Municipality of Greater Shanghai—which will be discussed briefly in the next chapter—may be called such. On the surface, practices of taxation seem, rather, merely to indicate desire to get money from those who appear to have it. Public practice does not exhibit a knowledge of public finance. It may be that the Nanking Government is not yet strong enough, nor experienced enough, to have lieutenants qualified to administer an intelligent fiscal policy; or perhaps knowledge of public finance on the part of subordinate officials can only be hoped for when the program for education of civil servants shall have had time to produce results. It may be possible that the evils will be remedied when

the Period of Tutelage is over and China has an adequately trained civil service.

Meanwhile, the desire for money from taxes on corporations and the like leads to excesses in taxation that are certainly alarming. Stories of irregular, confiscatory taxation in the area outside the foreign settlements are too numerous to recount. Sometimes it is taxation at the hands of military generals who have temporary control of a region. More often it is taxation at the hands of local authorities that is most damaging; these taxes are frequently collected for a year in advance, in January, let us say, then re-collected by an incoming set of officials in May; it now appears that taxes throughout China have been collected for at least two years in advance; moreover, there never seems to be any stated amount or rate, and there is seldom uniformity. The following story narrated by a well-to-do Chinese of social position, a personal friend of the individual concerned, and a loyal friend of the Nanking Government, illustrates the whimsicality of the situation. In the winter of 1931 a well-established citizen in the Chinese section of Shanghai was awakened by hammering on his front door. A new street number was being placed there by an employee of the city. The next day the householder received a bill for \$500 for the re-numbering of his house, but noting that neighboring houses were not renumbered, he ignored the tax. A few days later he was threatened with arrest for the nonpayment of his obligations. Ultimately, he had to pay the fine, which was the tax, in order not to go to prison. Such holdup methods make foreigners cling to the security of regular taxation which they enjoy inside the concession areas, and in businesses not registered with the Chinese Government. Foreign business fears the fate endured by Chinese and Chinese business when outside the concession areas.

The fears are not always justified, however. Another illustration of the fate of companies registered with the Chinese Government may lead to opposite conclusions to those just cited. The foreign insurance companies in Canton were required in 1930-31 to register with the government of Canton. For a time the companies resisted, but when the local government ruled

that it would not assist the Chinese in the collection of claims from any company not registered, the Chinese feared to insure with foreign companies, and the companies, therefore, registered to keep their business. In actual experience the fee was nominal, and there was no prying into, or interference with, the business from local Chinese authorities. Whatever conclusions may be drawn from comparison of the illustrations given can, of course, be but tentative. In Canton where registration worked no hardship, the government was comparatively stable and without immediate demands for funds for military activity. One might, perhaps, conclude that if Nanking and local governments could be stabilized and administered under conditions of peace for any length of time there would be less reason for apprehension on the part of foreigners in the case of the registration of corporations. As it is, the Government of China has not yet had a year of peace; the insecurity which threatens business is due, in part, to political instability.

In the winter of 1931 it was argued that the abolition of extraterritoriality and consequent emancipation from the especially privileged foreigner would bring such prestige to Nanking as would insure stability. In the summer of 1931, however, Nanking was attacked not because it failed to get rid of extraterritoriality, but because a large faction is dissatisfied with the leadership of Chiang Kai-shek. The stability of Nanking is in the balance, and with it the program of the Chinese Government in relation to foreign corporations.

Fair-minded Chinese are working for constructive measures which can accomplish the transition to Chinese sovereignty with the least possible dislocation of business after extraterritoriality is abolished. There is a plan for a Board of Arbitration to be composed of foreigners and Chinese in the old treaty ports or in leading cities; these would be selected by Chinese and foreign Chambers of Commerce. Such a board would provide a tribunal, adequate to the adjustment of difficulties, for foreign firms not registered with the Chinese Government and for firms preferring not to go into Chinese courts. For the settlement of business disputes, it is also suggested, there might be within each municipal government a Bureau of Social Affairs. The di-

rector of the Bureau would get in touch with foreign consuls and chairmen of Chinese Chambers of Commerce, who together might constitute an arbitration board when required. Here are evidences of a desire on the part of some government officials to find a working program for the period of transition from special protection under foreign jurisdiction, to complete Chinese sovereignty.

Ideally, here are interesting possibilities; these, in turn, may depend upon stability in government for their fruition. At present nothing is so certain as uncertainty. Foreign firms are clinging to the *status quo ante* and depending upon consular authorities to negotiate for their future security. This is a reasonable position when it is difficult to ascertain just what the corporation law means, or what is involved in registration of foreign corporations, especially when there is, as yet, no Chinese corporation lawyer.

The so-called hold-up of the Kailan Collieries is indicative of the uncertainty to business which exists under the present Nanking Government. The account here quoted as "One Man's Comment for Today," by H. G. W. Woodhead, in the *Shanghai Evening News* for April 8, 1931, may not give the whole story. It does, however, give it with the slant of the "Shanghai-minded," showing how such episodes are taken by the hard-headed foreign business man, with whom, after all, the Chinese are dealing at close quarters, and through whom public opinion in the West is much influenced, because these residents in China are supposed to know the situation at first hand. Mr. Woodhead writes:

Some weeks have elapsed now since the Kailan Mining Administration gave notice that "owing to difficulty of transportation on the Peiping-Liaoning Railway" it was unable to meet in full its local contractual commitments for coal. Since then the meagre supplies of coal received from Chinwangtao have compelled the Administration to suspend sales of domestic fuel, and considerably to reduce deliveries to other patrons. It is not easy to ascertain the cause of the present coal shortage; but it is quite obvious that the "difficulty of transportation" has been deliberately effected by the railway authorities with some ulterior motives. Early in March the railway seriously restricted the service of coal trains, both to Tientsin and to Chinwangtao. It was pre-

tended, at first, that defects in the locomotives employed for coal haulage were responsible. . . .

The Kailan Mining Administration, owing to the shortage of rolling stock on the Peiping-Liaoning Railway, some years ago ordered, and financed, the purchase of eighteen powerful goods locomotives, and 600 forty-ton coal wagons. This equipment, it is understood, is being acquired by the railway on the hire-purchase system, and it is, I believe, a condition of the agreement, that it is, until fully paid for, to be reserved exclusively for the transport of coal from the Administration's mines. It is reported, nevertheless, that six of the K. M. A. engines were seized, and carried off, by the Shansi militarists, and that of the remaining dozen, all but two or three have been "kidnapped" by the railway, under the pretext that they are in need of repairs. In the meantime, hundreds of loaded coal-wagons are cluttering up the mine-sidings, unable to move for want of sufficient haulage power, and the railway is making heavy claims for demurrage. . . .

Whatever the real reasons underlying its action, it is surprising to find a Government Railway deliberately holding up coal deliveries from one of the most important colliery administrations in China. Royalties and other taxes and contributions, amounting to very large sums annually, are paid to the Provincial Government. The Administration employs some 40,000 Chinese, and its daily output has already reached 18,000 tons. . . .

If the railway has well founded claims against the Administration, either in respect of demurrage, or of coal charges, it should surely be possible to adjust them without a deliberate hold-up, the effect of which may well be seriously to affect the coal sales of the Administration, and the revenues of the railway. . . .

It is very difficult to imagine a State Railway in any country, without exhausting every other method of reaching an equitable settlement of the issues in dispute, holding up a large colliery enterprise, with the probable results of temporary if not permanent loss of trade and freight earnings, and an increase of unemployment. . . .

The action taken by the railway, however, suggests that political issues are in the background, and that the railway authorities are abusing their power to undermine and harass a prosperous Sino-Foreign enterprise. Already it is reported, an agitation is being fostered for the "recovery" of the Kailan Mines.

If this is the motive underlying the railway's hold-up, it is hardly calculated to create confidence in the oft-repeated assurances of Chinese officials and politicians that China welcomes the introduction of foreign capital. The prosperity of the Kailan Mines has been mainly due to the administrative and technical ability of the foreign staff. But Chinese interests are fully represented in the executive and every other department of the Administration. The Director-General is a Chinese. And it has been the deliberate policy of the Directors to appoint Chinese to,

or to train Chinese for, positions in every department of the enterprise. Nearly three million pounds of foreign capital are invested in the mines and their equipment, and the history of other Sino-Foreign mining enterprises has not been such as to encourage further foreign investments in Chinese mining enterprises, if the one really successful example of Sino-Foreign co-operation is to become the target of attack by a Chinese Government undertaking. . . .

There are some who believe that the hope of the Chinese is to tax the foreigner out of business existence, or to so regulate foreign business that its continuance will be impossible. The desire to divert business into the hands of Chinese may be laudable; to do it by methods of confiscation would be disastrous to Chinese as well as foreigners. China needs to preserve all the business that has been established, whether Chinese, Sino-foreign, or foreign. Until China can get well on the way to economic rehabilitation she needs especially to keep the beginnings of economic organization which the Chinese have already achieved. A too drastic restriction of foreign business in China would have disastrous results for Chinese business as well, and for the employment of Chinese; the two are closely interrelated. The gradual application of the so-called socialistic principles of Sun Yat-sen which would have the Government employ experts to direct the rehabilitation of agriculture and industry, to manage government-owned railways, telephones and telegraphs, and to regulate mining industry, will eventually make the Chinese industrial world Chinese. But a too rapid pulling down of what is, before there is something to take its place, means disaster for China.

Where the balance will rest between extreme policies of political nationalism, and economic development and stability, it is, at present, impossible to determine. Any opinion must be influenced by the degree of confidence felt in the strength, sincerity, and wisdom of the Nanking Government. Their objectives, Chinese sovereignty and opportunity for Chinese—vital interests of China and the Chinese—are undebatable. Details of policies and their effect upon foreign business are alike unpredictable. Will they be governed by the Chinese experienced in business, the moderates, who declare that business knows no

national boundaries, who believe that out of business development China will achieve what she wants? Some of these go so far as to say that for business development centers of stability and security are for the present necessary; for trade the Yangtze should be kept open, and since Chinese are not able to do it, warships in the river are merely supplementary to Chinese efforts. The International Settlement, they believe, must continue to be administered by the property holders of various nationalities, who will endeavor to protect themselves from bad laws which might injure business. Here, within China itself, is the conflict between nationalism and party politics on the one side, and the economic well-being of the nation on the other. Will the Chinese cling to politics or will they work out their economic well-being?

It is quite clear to many, to moderates as well as radicals, that even for economic well-being it is necessary to get rid of the abuses of special privilege and consular jurisdiction which ignore or violate Chinese sovereignty. When criminals can avoid Chinese police and Chinese courts by escaping to concession areas; when smuggling of opium is actively carried on by French and Japanese who may not be brought to justice because they are protected by consular jurisdiction; when a French importer with French police can invade a Chinese warehouse and confiscate goods which he claims violate the trademark law, instead of bringing proceedings in the Chinese courts according to western law and western practice already efficiently functioning in this regard; when all these things and more are constant reminders to the Chinese that they are not master in their own house, then there is ground for the insistent demand for the abolition of special privilege—the abolition of those terms in the old treaties under which abuses continue. Even the moderates, who understand the need of business for protection and security, perhaps through coöperation with the foreigner, find common cause with the radicals; all demand the abolition of extraterritoriality; nullification of the old treaties appears to all to be vital to Chinese sovereignty and to opportunity for Chinese development. This was true in the experience both of Turkey and Japan, therefore they believe it will be

true for them also. Without the many compartments of various national jurisdictions, as now exercised, great problems of business relationships could be brought into the open and dealt with on the merits of the case, irrespective of national prestige, special privilege, or exemption. There is need for modern business legislation quite apart from the issue of extraterritoriality, or the reservations it imposes; people of all nationalities working together as business men, not as nationals, might find a working basis for essential business relationships. Unfortunately, extremists on each side—Chinese who would reserve all opportunity for Chinese, and foreigners who wish special guaranties, exemptions, and privileges on the other—hinder rational readjustment.

Views of prominent business men, foreign and Chinese in the city of Shanghai, quoted at random are interesting at this point. "Business and politics should not be mixed." "Anybody can do business, extrality is politics." "Extrality is immaterial" to all the business relationships already described. "Extrality has nothing to do with business, business is done through simple, non-political relationships." "Extrality treaties are in the last analysis personal protection treaties." "After extrality goes we can expect to deal as one man with another and must know the other man very well."

In the main business relationships are in an extralegal, extra-political world. Extraterritoriality which now prevents foreigners and foreign business from being summoned into Chinese courts might be interpreted as protecting foreigners from vindictive or unscrupulous Chinese. Unfortunately, such an assumption seldom asks the parallel question, How is the Chinese to be protected from the unscrupulous foreigner? The irony of it is that it resolves itself into a matter of personality, which in the last analysis is the Chinese rather than the western concept. Under ordinary circumstances the westerner might go ahead, perhaps recklessly, trusting to the law to secure justice if he got caught. If the Chinese concept of the duty of the magistrate—the maintenance of right relationships—has been superseded by the framework of a judicial system, the fact remains that parallel to that newly imposed legal system there has developed

a new intricate set of business relationships which in the last analysis succeed "through the cultivation of right relationships."

This is of real concern in relation to the presence of foreigners and foreign business in China. Business relationships may have found a working basis which is independent of extra-territoriality. But these relationships can continue only if business continues. Therefore the question concerning the bearing of business contractual relationships upon the question of extra-territoriality becomes the question of the bearing of extra-territoriality upon the existence of foreign business in China.

The following chapter—Leasehold in the International Settlement of Shanghai—is only an episode which may be suggestive of the attitude and policies which the Chinese may decide upon.

## CHAPTER VII

### LEASEHOLD IN THE INTERNATIONAL SETTLEMENT OF SHANGHAI

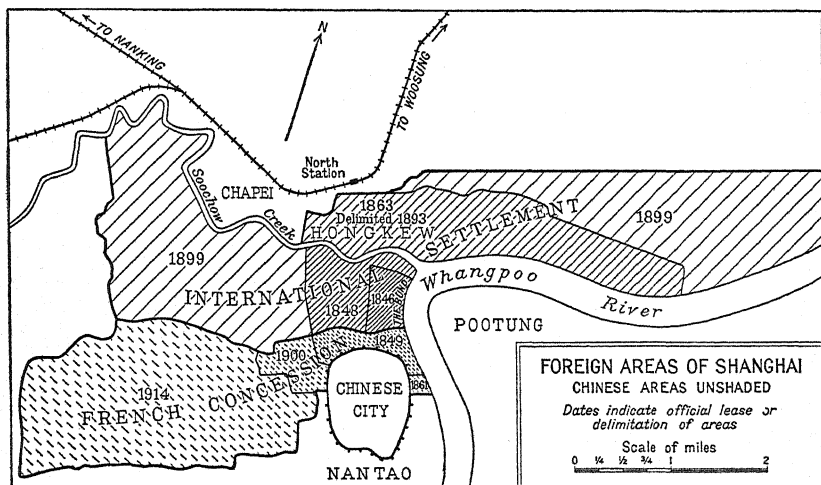
THE exercise of Chinese sovereignty in the International Settlement of Shanghai centers around the issuing of title deeds, the jurisdiction over roads on land leased to the Municipal Council, and the control of the repair of wharves and jetties—the boundaries of the Settlement along the water fronts.

The campaign for the rendition of concession areas if realized would not affect the International Settlement, for its status is different from that of the concessions. Concession areas were leased by the Chinese Government to the foreign Powers which held them. The agents for the nations holding the concessions laid out the area in suitable lots, and granted leases for long terms to their own subjects. Rendition of concessions means the return to China of the "leased areas" by the nations which have held them. When this is accomplished foreigners holding leases within the areas will hold directly from the Chinese governing authorities. In the years 1927-30 four British concessions—Amoy, Hankow, Kiukiang, and Chinkiang—were returned; the transfer of Wei-hai-wei was consummated, and in 1931 the Belgian Concession in Tientsin was relinquished. The status of the International Settlement is different; in fact its exact status is a matter of controversy.

The history of the Settlement generally known to the man in the street is that, back in the fifties of the last century, the Chinese told the foreigners they could take up residence and lease land for business purposes on the mud flats where the Soochow Creek joins the Wangpoo River.

Today, the visitor to Shanghai may step from the tender of an ocean liner onto an extensive quay, and proceed along The Bund, a well-paved boulevard, flanked on the land side by imposing office buildings which would be a credit to any me-

tropolis. This is the portal to the foreign settlement which includes the International Settlement and the French Concession, or, in the literal translation of the Chinese term, the "Leased Area." Extending far to the left and into the interior, the French Concession comprises an extensive business and residential section; far to the left and likewise extending into the in-



terior is the Chinese city. Chapei and extensive Chinese sections extend far to the right. It all appears to be a huge, sprawling metropolis; the visitor cannot distinguish where one community ends and another begins, any more than one distinguishes the boundary between Los Angeles and Hollywood, or New York and the Bronx. To all appearances the foreign quarter—the French Concession and the International Settlement—dominates. The old Chinese city remains almost unmodified by proximity to the foreign community; it is congested and none too sanitary. The mud flats that have become the International Settlement itself have been drained and filled in behind the jetties; and the Settlement that grew up there is now a well-paved, well-lighted European city with water supply, sewerage system, and all that makes for comfortable living in the western sense. The same is true of the French Concession.

The French Concession has a status of its own comparable to that of other concessions throughout China. But the International Settlement is individual. Throughout its history it has been greatly influenced by the British who did business there; its governmental development is somewhat Anglo-Saxon in character. The Land Regulations formulated in 1870, amended and regranted in 1898, have been looked upon as a sort of Magna Carta of their privileges.

These Land Regulations, when amended and regranted in 1898, were drafted by a special committee and passed by a special meeting of the foreign ratepayers; then they were sent by the Municipal Council both to the Senior Consul for consideration by the Consular Body, and to the local Chinese officials. After approval by these various authorities, they were sent to Peking for ratification by representatives of the Treaty Powers.

Matters were greatly facilitated when the Chinese local official, Taotai Tsai, informed the Senior Consul that the Viceroy, having received a copy of the amended Land Regulations, deemed it undesirable to interfere with them; and that definite provisions should be agreed upon between the Municipal Council and the Consular Body with the sole object of making them advantageous to the people and merchants. In the spring of the following year (1899), after approval of all parties concerned, Taotai Li informed the Senior Consul that His Excellency Liu, Superintendent of Southern Trade, had approved all proposals—revisions, amendments, and extension of jurisdiction as well. He also forwarded a copy of a proclamation which he had written to the Shanghai District Magistrate for the purpose of putting the proposal into force. This proclamation published the Chinese authorization for the Regulations and declared them binding. In translation the proclamation says:

The Regulations jointly framed at various times for the former Settlement, as well as the subsequently added new Regulations framed at the time of the extension of the Hongkew Settlement, . . . have already been published by the Municipal Council and posted at the entrance of the Municipal Office and at other conspicuous places for general information. They are to be uniformly adhered to. . . . This proclamation is now issued for the information of all merchants and people; after its publication all matters within the defined limits of the

International Settlement shall be governed according to existing regulations, excepting temples established by Imperial command and Chinese Government occupied sites; the existing regulations may not be disregarded.

From the standpoint of western concepts, when the Chinese authorities had thus agreed to the extension of the Settlement, and accepted the Land Regulations as then existing for application to the extended area, the case for the validity of the Land Regulations and By-Laws was complete. From a legal point of view, that validity has been tested and proved because the Provisional Court in Shanghai, the British Court, and the United States Court for China, as well as other consular courts, have upheld the validity of these same Land Regulations and By-Laws. Here is another example of terms of a contract between foreigners and Chinese being maintained by foreign jurisdiction.

With this assurance of authority the International Settlement has functioned, assuming security against all innovations. The source of its authority was even forgotten, and recently became the subject for special investigation. At the suggestion of the Kyoto Meeting of the Pacific Relations Conference, Mr. Justice Feetham of South Africa was invited by the governing body of the foreign city, the Municipal Council, to inquire into the history of negotiations between foreigners and Chinese. It was hoped that he would ascertain the basis upon which the foreign settlements may continue to exist. His report, released during June and July, 1931, covers the history of the International Settlement from the beginning and deals comprehensively with the whole problem. His recommendations naturally involve more detailed study than can be summarized here.<sup>1</sup> In this chapter, however, we may suggest the scope of the problem; we shall attempt to define the principles involved in order to assist our understanding of the bearing of contractual business relationships upon extraterritoriality.

Back of the 1870 Land Regulations and their amendment in 1898 there is a story of beginnings that explains the origin of

1. The discussion in this chapter is based upon investigations which were made in the winter of 1931; it is the result of an independent study.

the governing bodies just mentioned. At the start there were simple regulations for this area in which the British and other foreigners could acquire land from Chinese holders. Any agreement concerning land transfer between a Chinese and a foreigner (let us say British for clearness) was reported to the British Consul, who reported to the Taotai (the proper Chinese official for the district). The Taotai in turn issued to the British subject, through his Consul, a title—a perpetual lease—for which a small annual rent was paid to the Chinese authorities. In 1845 a committee of three British merchants was appointed by the British Consul, and approved by the Taotai, as overseers for the general welfare. They came to be known as the Works and Jetties Committee. Nine years later the foreign renters of land held a public meeting, called the ratepayers' meeting: the Settlement provided for itself an elected representative body, it initiated the organization of a police force, and arranged for the exercise of compulsory powers of taxation.<sup>2</sup> The original Committee, or Office of Works and Jetties, whose business it was to make the Settlement habitable, and to provide conditions favorable to trade and commerce, became the Municipal Council, elected by the ratepayers; it exercised jurisdiction over the police power and regulated taxes, developed public works, and governed the Settlement. The custom of government was written down in the Land Regulations and approved by Chinese authorities in 1870. Residents and ratepayers have therefore looked upon the Land Regulations as the constitution, to use American terminology, of the Settlement, which they conceive of as a self-governing community, a unit existing beside the French Concession and the native city, all of which are spoken of as the city of Shanghai.

The Consular Body, comparable to an executive council, has always been looked upon by the Municipal Council as the guardian of the rights and privileges of the Settlement. This is still true, even though the Chinese within the Settlement were finally, in 1928, admitted to representation in the Council. Chinese residents now choose their representatives, and through

2. *Report of Honorable Mr. Justice Feetham, C.M.G., to the Shanghai Municipal Council*, I, 28.

a member of the Foreign Affairs Department of the Chinese Government their names are reported to the Consular Body, which submits the names to the Council. The Consular Body is thus clearly an authoritative guardian of the status of the Council.

The process by which the Chinese were admitted to membership in the Council is interesting.<sup>3</sup> It is also interesting to know at the beginning that the Chinese pay 55 per cent of the total tax budget of the Settlement. Yet it must also be noted that the record shows that while the average *per capita* tax upon foreign residents is 145 taels, the average tax upon Chinese is 6.6 taels. Because of the old issue of "no taxation without representation," and for other reasons as well, on April 14, 1926, a resolution on behalf of the Council was presented at the meeting of ratepayers by Mr. Fessenden of the Municipal Council with the comment that one way "to secure the co-operation of the Chinese is by recognizing the justice of his desire to have a voice in municipal affairs." The resolution stated "that in the opinion of this meeting the participation of Chinese residents in the government of the Settlement is desirable, and that the Council is hereby authorized and instructed to make forthwith representation to the Powers concerned with a view to securing the addition of three Chinese members at an early date." The resolution was forwarded by the Council to the Consular Body for transmission to the Foreign Ministers at Peking and the Chinese authorities. "In October 1926 the Consular Body received a communication from the Commissioner of Foreign Affairs, stating that he had referred its communication with regard to Chinese representation in the Council to the Waichiaopu (Ministry of Foreign Affairs), and was informed that the General Government and the provincial Government" had "approved and accepted the offer as a temporary arrangement." On being informed of this communication the Diplomatic Body authorized the Consular Body to "come as soon as possible to a temporary arrangement with the local Chinese authorities in Shanghai for putting this suggestion into effect, pending such time as the necessary formal alterations can be

3. Feetham, *Report*, I, 128-129.

made to the Land Regulations." Three Chinese members were admitted April 20, 1928; and on May 2, 1930, the number was increased to five. There are fourteen members in all: five British, two American, two Japanese, and five Chinese.

Since 1927 the Chinese have been endeavoring by a new reorganization of their city to reclaim their jurisdiction (which they assumed had been allowed to slip away through careless administration), and to exercise the sovereignty which they believe is theirs. To this end they have created the Special Municipality of Greater Shanghai, in which the International Settlement is comparable to a borough. It is the desire and purpose of the Chinese creating the Special Municipality of Shanghai to exercise the sovereignty of the Chinese city over the borough of the International Settlement as a part of their Municipality.

That ambition has shown itself in three particulars. The first is in relation to roads. The Municipal Council according to Article VI of the Land Regulations has exercised the right to build roads leading out of the Settlement. Land was acquired by purchase from the owners. The Council held a private right of ownership in these roads—quitclaim and perpetual lease. As a result the settlement of foreigners has followed the roads. There has been a tendency for foreigners to assume that jurisdiction of the Settlement followed the foreigners holding land along the roads which were owned by the Council. In ways such as this, jurisdiction of the Settlement was being extended; such extension of jurisdiction has been resented by the Chinese. To checkmate this tendency and in fulfilment of the demand for recognition of Chinese sovereignty, the Special Municipality of Shanghai has recently claimed sovereignty over the roads. Through Chinese police or soldiers all work on the roads extending out from the International Settlement, and in which the Municipal Council claimed ownership, has been interfered with; for the Municipality of Greater Shanghai insists that no repairs may be made upon any roads within its jurisdiction without its permit. Such permit, moreover, is to involve recognition of the ownership of the roads by the Municipality of Greater Shanghai instead of by the Municipal Council of the

International Settlement. So far, affairs are at a standstill. The Municipal Council refuses to forfeit its ownership, which is independent of Chinese municipal authorities; the Municipality will allow no repairs.

In like manner the Chinese have claimed jurisdiction over the jetties. Through police or soldiers the Chinese Municipality has stopped every attempted repair of the break in the jetty on the Soochow Creek, which I understood to be along the edge of the area added to the original Settlement in 1899. Work may be undertaken only with a permit, and a permit requires recognition that the land adjacent to the repaired jetty is held of the Chinese Municipality. To the present the Municipal Council has refused to forfeit its complete jurisdiction within the Settlement, which is independent of Chinese municipal authorities; and the Municipality will allow no repairs.

In the third place the Chinese, contending that their sovereignty shall be the sole sovereignty in China, have been asking that all land held in perpetual lease within the Settlement shall be held directly of the Land Bureau of the Special Municipality of Greater Shanghai. New instructions, issued in 1930, require that all deeds of lease (or bills of sale) made out in the International Settlement before 1930 shall be replaced by new deeds within four months after the Land Bureau assumes control of matters pertaining to foreigners. In the future foreigners leasing land from Chinese citizens shall take out draft deeds of perpetual lease furnished by the Land Bureau; all other transactions will be invalid. Furthermore, any draft deed not given in exchange for a title deed within two months of the date of execution shall be null and void, and the land shall revert to the Special Municipality of Greater Shanghai. This requirement when applied to lands newly acquired in the region of the roads owned by the Municipal Council is one matter—a means by which the Chinese Municipality would make impossible the assumption that registration is within the jurisdiction of the Settlement. The new regulations requiring registration of mortgages and the issuance of new land deeds even for transfer between persons of the same nationality have, however, involved

the application of Chinese jurisdiction over title deeds inside the Settlement proper.

The surrender of the position of the Municipal Council in relation to the roads which it holds as private property is looked upon by some merely as recognizing a demand for the rendition of property which had been purchased, but the return of which, from the point of view of the Chinese Municipality, it is legitimate to demand because the control of roads and waterways is looked upon as an essential part of the sovereign rights of any municipality. Others see something still more far reaching, namely, if the Municipal Council recognizes the sovereignty of the Chinese Municipality over it as the owner of the roads, it (the Council) is no longer solely the independent agent of the self-governing community of ratepayers in the International Settlement. A similar argument holds in relation to the demand for recognition that the land adjacent to the repaired jetty is held of the Chinese Municipality. Gradually other, and in the end all, jetties and wharves could in like manner be brought under Chinese jurisdiction. If this should come to pass the original function of the Municipal Council—the Office of Works and Jetties—would vanish. The control of the jetties involves the right to tax them, and the right to tax would involve the power to regulate the commerce therefrom. "If you control the banks of the streams you take away the *raison d'être* of the Municipal Government of the International Settlement,—the control of its business life, its trade and commerce."

Likewise, the procedure for landholding which is now in controversy between the Municipality of Greater Shanghai and the International Settlement, is very far reaching in its consequences; the readjustment demanded by the Chinese is believed to threaten the whole credit system of the International Settlement. Credit—as we have already shown—can only occasionally be based upon securities, for dependable securities hardly exist in the present stage of Chinese industrial and financial development. There is almost no local security other than land; in consequence, most of the security for credit within Shanghai is upon property within the foreign settlements. Guaranties for loans and for bonding purposes, also, rest upon land values.

Moreover, land values are greatly inflated, which means that the basis for credit is inflated. Inflation has been due to a number of causes which are local variations of the old law of supply and demand plus a fluctuating silver exchange. The increased demand for land has been due in part to instability in government, to civil war and banditry in the areas outside the foreign settlements. Since the revolution in 1927, especially, there has been considerable migration into Shanghai of Chinese of means who have come there to enjoy the protection afforded by the International Settlement and to avoid irregular and confiscatory taxation from military generals without. This increase of population within the limited area has naturally increased the demand for land for residence, business, and investment. A contemporary factor of equal importance has been the accumulation of silver in Shanghai, both as a safe depository and as a place for investment. This oversupply of money seeking investment within a limited area has greatly increased prices. In addition the recent world-wide drop in the value of silver and silver money sent the inflated values still higher. And, finally, because of unstable currency values resulting from fluctuating exchange, land has inevitably become more than ever equivalent to a gold reserve. Excessive prices have been paid for land, even \$5,000 a front foot for shallow lots in the business section. Consequently, the credit basis for banking and all financial transactions has become enormously inflated.

In view of these circumstances the new proposals regulating land transfer and registration of leases, which exact high fees and threaten confiscation for nonconformity, are a serious matter. The execution of such a program would unavoidably deflate land values. Any deflation of land values would mean deflation of credit values, which would inevitably weaken the credit system, perhaps even threaten the whole credit structure of the local financial banking community. Drastic local deflation would affect foreign as well as Chinese business and banking, which, though small in the world's total, has wide ramifications; and the results could not be without influence on the world at large.

The Consular Body of the International Settlement, there-

fore, has resisted these contemplated changes. The Consular Body, however, is not only representative of the point of view of the Settlement; it is, naturally, representative of the point of view of the Treaty Powers also. That Body, therefore, in a sense an authoritative spokesman, brings into the local government of Shanghai the undue influence of official representatives of the Powers. It may be that it was to protect the young Municipality of Greater Shanghai from such possible undue influence on the part of the foreigners that the Foreign Minister in Nanking informed the Municipality that the Consular Body is not recognized by the National Government and therefore has no legal status; that consequently there is no reason why the Municipality of Greater Shanghai should—in fact there is every reason why they should not—deal with the Consular Body in connection with matters pertaining to the Municipal Council.<sup>4</sup>

Before 1930, according to the Land Regulations, the issuing officer, who stamped the deeds made and presented by the various foreign consuls, was the Commissioner of Foreign Affairs for the district within which the International Settlement assumed itself to be an independent municipal unit. In the new procedure the officer to sign and seal the triplicate deeds will be the Director of the Land Bureau of the Special Municipality of Shanghai, in fact the office of Commissioner of Foreign Affairs has been abolished. This unilateral change in the Land Regulations was protested against by the Consular Body; the Chinese replied that due notification of the change had been given. Moreover, the new regulations required that transfer of title deeds by consular authorities should be replaced by the issue of new deeds in triplicate, which shall be a form of deed furnished by the Land Bureau and shall include an attached plan of the holding which must be prepared by the Bureau and not as formerly by the consular authorities.

In relation to the 1930 proposals for reissuance of all title deeds under the authority of the Land Bureau of the Municipality of Shanghai, the Senior Consul held that such practice would be a contravention of the Land Regulations of the International Settlement, and these Regulations are being held as

4. *Shanghai Evening News*, March 14, 1931.

a veritable Charter of Liberties. The old deeds had been drawn by the various consulates; the maps attached were from surveys authorized by the Municipal Council. The whole was sent to the Chinese Commissioner of Foreign Affairs of the district for stamping. Finally, all deeds were recorded, not with the Chinese but in the consulate of the national holding the lease. Furthermore, these old deed forms had stated that the land leased by a foreigner was located in the Treaty Port of Shanghai, whereas the new forms state that the land is situated in the Special Municipality of Shanghai. Particular protest was made against this change because even though it is nominally concerned with land registration, the acceptance of it in this particular might

seriously prejudice the Council's position in any negotiation which may take place in the future in respect to the Council's administration or future status. . . . To labor the point—if the Settlement and Concession are no longer to be regarded as an enclave but as districts of the Shanghai Special Municipality, what limit is there to control by the Special Municipality over all matters not specifically covered by the Land Regulations?<sup>5</sup>

Two other points in the new program of registration, vigorously protested against by the Consular Body, were penalties and excessive fees. The penalty for nonpayment of annual ground rent, and likewise the penalty for surreptitious transfer of rented land without the formality of a new deed issued according to the new law, was to be confiscation. It was asserted by the Senior Consul that "it is quite new to find one municipality with rights of eminent domain over another municipality." Especial protest was made against the 50 per cent tax upon the difference between the declared value and the actual cost; this was interpreted as "meant to be an increment of value tax on foreign deeds" which would be made possible by the requirement of the issue of new deeds upon every transfer of property; this was pronounced to be "a capital levy on the increased value."

5. Manuscript correspondence between Dr. Tchou Yen, Director of the Land Bureau of the Special Municipality of Shanghai, and the American Consul General and Senior Consul, Edwin S. Cunningham.

It is quite clear that confiscation as a tool of newly asserted sovereignty seems, to the governing bodies of the International Settlement, to be a serious upsetting of the *status quo ante*, as well as of legal concepts held by western officials. At present, confiscation is a threat. A blockade of the primary functions of the Municipal Council through the assertion of jurisdiction by the Special Municipality of Shanghai, and the prevention of repairs without permit, are technical methods of exercising the sovereignty which the Chinese claim in theory.

Whether such changes can be accomplished within the scaffolding of extraterritoriality, it is difficult to prophesy. Much of course depends upon the stability, strength, and endurance of the Nanking Government. If this Government, carrying out the resolutions of the People's Convention of May, 1931, proceeds to act on the assumption that extraterritoriality can be abolished unilaterally, and if this is accomplished (in 1932, as originally planned, or later), then the methods of control already projected by the Municipality of Shanghai may be those employed. These attempts to extend Chinese sovereignty over jetties, roads, and leaseholds do not appear to deny to foreigners the right to hold land under condition. It is quite clear, however, that the Chinese are determined to exercise sovereignty; and the policies above outlined ignore obligations undertaken, or circumstances permitted, by previous governments. Extraterritoriality and all special privileges and exemptions are destined in their program to be eliminated. Chinese sovereignty must be recognized.

In this particular it is interesting to note how in its dealing with the International Settlement—a unit organized along western lines—the Chinese method of procedure is modeled upon western practice in municipal government. Even the unearned increment tax is according to advanced theories of taxation already in partial use in England itself. The Chinese would, evidently, meet the West with the ideas and technique of the West.

Not only foreigners but Chinese of wealth fear that the extension of Chinese sovereignty under present conditions may result in irregular, even confiscatory, taxation of all property

and business, because from time to time that is now taking place—as already described—outside the boundaries of the International Settlement and other special areas. Members of the International Settlement are, therefore, clinging to the technicalities which, according to western thinking, guarantee them definite rights and privileges, even though these guaranties were given by a former *régime*. Control by the present Chinese Government holds no guaranty of security, either for life or property; it might even prove disastrous to both Chinese and foreign business. The Japanese will, of course, quote the methods used against their rights and commerce in Manchuria as proof, to them, that this is true.

Superficially it is easy to see, throughout the programs under discussion, an attempt to extend Chinese sovereignty into the International Settlement without the formal abolition of extraterritoriality. It appears to some to be another evidence of a policy of confiscation of foreign property rights; to others it is merely an attempt in practice to set aside the Land Regulations of the International Settlement, even though they have been recognized as the contract upon which the Settlement has based its government. To those considering the business interest in the city of Shanghai alone, such drastic change in conditions of leasehold threatens the credit system of the Settlement in the case of banks, foreign and Chinese, and of individuals as well. To those who have built their financial security to a great extent upon the present property values, such a policy toward leasehold, one which might deflate property values and shake the credit system of the International Settlement, appears revolutionary and dangerous. Moreover, it would be inevitable that subsidiary contractual business relationships must also be affected.

Whether such changes can ever be accomplished with the scaffolding of extraterritoriality still standing, it is difficult to prophesy, yet the answer would seem to be prerequisite to any evaluation of the importance of extraterritoriality to business contractual relationships in general as well as to those of a leasehold nature. Are business and business relationships dependent upon guaranties under extraterritoriality now and here-

after; or are they dependent upon whatever policy the Chinese Government, national or local, may choose to pursue?

These attempts to extend Chinese sovereignty over leasehold do not appear to deny to foreigners the right to hold land under condition. Indéed, Foreign Minister C. T. Wang at the recession of the Belgian Concession in Tientsin clearly stated that favored-nation clauses in the treaties would allow foreigners to buy land. The amount of land to be purchased, however, will probably be limited for very practical reasons: if one knows that in some provinces land may be purchased for an average of \$11.00 Mex. per mou, or \$17.00 gold an acre (with the exchange \$4.00 Mex. to \$1.00 gold), it is easy to understand the fear that land purchase by the foreigner might give him even greater power than he had under the extrality treaties. It is consequently quite clear that no policy of land purchase will voluntarily be allowed which might give to the Japanese, for example, an opportunity to extend their jurisdiction into Manchuria by the simple method of land purchase.

Above all one thing is certain, the Chinese are determined to exercise sovereignty first; what may happen to business or business contractual relationships is a matter of much less concern.

In practice, however, especially in the region south of Manchuria, there are Chinese bankers and business men who have had enough international business knowledge and experience to work for conditions that shall insure stability. Frequently, they are willing to coöperate with foreigners; but, on the whole, they wish for the elimination of those special privileges which they feel give foreigners an undue advantage. Western practice on Chinese initiative is, therefore, more acceptable than western practice suggested by the foreigner. Nevertheless, in Tientsin there is a case of joint management which has been arranged in anticipation of the recession of the concession areas to the Chinese. Foreign money, for the most part, has been invested in Tientsin public works—water, light, sewerage, streets—and bonds are not yet paid. In order to guarantee repayment after the concession shall have been given back to the Chinese, something like a trusteeship is being created and provision is made for a sinking fund requisite to repaying the bonds within

a decade. The personnel for this so-called trustee-management is both Chinese and foreign—the head is Chinese with functions prescribed in the agreement. The Nanking Government has approved of the arrangement, which is quite different from the devices of the Municipality of Greater Shanghai for controlling roads, wharves, and jetties. To be sure, the circumstances are different from those in Shanghai. In itself the Tientsin plan is a good one: an arrangement western in organization for the payment of obligations to westerners for what is to be taken over by the Chinese; the management under a Chinese chairman is to be a joint affair until the foreign interests have expired; it has the approval of the Nanking Government; in the end the public works will belong to the Chinese. There are those who question the workability of the plan. It is, in fact, a contractual relationship which, though very well safeguarded within itself, will really depend—as do business contractual relationships in China—upon the good faith of the parties; or, in case of a breakdown, it must depend for support upon the Chinese courts or the National Government. If it works it will be because the Chinese wish it to work; it will depend upon the policy of the Chinese in regard to agreements with foreigners; it may depend upon the stability or policy of the Nanking Government.

Do the Chinese intend, if they can regain their sovereignty, to discriminate against the foreigners, to make conditions so impossible that they cannot continue to reside and carry on business in China at all? Is confiscation their program? or is it merely a tool, a means by which they would gain their sovereignty? The answer rests, as we have stated repeatedly, in the character and purpose of the government of Nanking, and of the local governments as well. The uncertainty is so great as to handicap adjustments that might otherwise seem reasonable and simple. Therefore, the situation seems to call for some machinery of coöperation whereby the Chinese may realize their ambitions immediately without too much unreasonable obstruction, or too great risk to the economic life of China which is both foreign and Chinese.

## CHAPTER VIII

### THE NEED OF MACHINERY FOR COÖPERATION

WITHOUT question the Nanking Government has been justified in saying that extraterritoriality must go, especially when it is impossible, because of the foreign jurisdiction exercised in concession areas, to bring even Chinese lawbreakers to trial by Chinese in the Chinese courts. This is true, for example, in relation to Chinese who peddle opium in and from the French concession in Shanghai. The opium king is alleged to pay the concession \$125,000 Mex. a month for the privilege. Inside information has it that he offered the Shanghai Municipal Council \$250,000 a month for the same privilege, but was refused.<sup>1</sup> A similar situation exists in Manchuria. Here, the Japanese have been caught again and again and turned over to the Japanese Consular Court for trial; but the opium smuggling continues. An article from the *New York Times*, dated Tientsin, May 10, 1931, reports that a survey of the opium evil has resulted in an estimate from the Bureau of Social Affairs that

12,000 dens are operating to-day [in Tientsin] in the Japanese and French concessions. Officials of the British concession keep the evil at a minimum, and no statistics have been given out as to the number of dens in the Chinese city or in the former German and Russian concessions which are now under Chinese administration.

The official estimate of the opium consumption in the Japanese and French concessions places the cash value of the drug smoked daily at \$30,000. Some of the opium dens are large hotels, three of which make profits estimated at more than \$500,000 a year each. The resorts for smokers range from these elaborate establishments down to single rooms in shabby private houses.

Except for small quantities of very costly Persian opium imported for rich epicures, all of the drug smoked in Tientsin is grown in China. The most expensive comes from Jehol and Manchuria and retails for

1. The same statement is quoted by Sherwood Eddy, *The Challenge of the East*, p. 78.

\$4 an ounce. The second grade comes from Suiyuan and Charhar, northwest of Peiping and brings \$3 an ounce. The cheapest grade, at \$2.40 an ounce, comes from Shensi Province.

From 1925 until the summer of 1928 the late notorious General Chu Yu-pu, then Governor of Chihli Province, obtained an enormous revenue from opium by taxing every lamp \$8 a month. Since the Nationalists captured this area in 1928 an effort has been made to suppress the evil.

Closely related to this, and equally annoying to the Chinese, is the situation in respect to extradition; it sometimes even complicates the dealing with evasion of the law in relation to opium smuggling. The lack of satisfactory extradition arrangements between Chinese China and the foreign settlements in China frequently results in the foreign settlements sheltering Chinese from justice. A Chinese policeman, for instance, when pursuing a lawbreaker, may not follow him across the street if the other side is within a concession, British, French, or Japanese. The suspect escapes pursuit immediately he crosses into any foreign settlement. The same restrictions apply between concessions, and in relation to the native city; foreign police may not go beyond the jurisdiction of the nationals whom they serve. The result is the thwarting of justice. There is much to be said on both sides of this question as there is in the opium matter; unquestionably there are evils on both sides. The Chinese argue, for instance, that so long as foreigners smuggle opium and make money out of it, Chinese can't afford not to get some of the loot; some foreigners turn this the other way around. The truth is, one evil does not justify another; there are a round of evils under cover of extraterritoriality—abuses too numerous to catalogue—which without question should be done away with.

The existence of the special areas, on the other hand, and the consequent freedom from interference by Chinese in the present chaotic state of China's existence, is of advantage to the Chinese themselves. As has been indicated earlier, Chinese banking, Chinese export-import business, and other Chinese enterprises have been able to develop here; they have not developed outside the areas and independent of them to any appreciable extent. Within the special areas the Chinese as well as foreigners

have been exempt from the irregular and destructive taxation existing in regions outside; this alone has been a great advantage, it has put them on a par with foreigners and given them a chance in open competition. This security is so much coveted that even in 1931, when there was agitation for the rendition of Shanghai, Chinese in that Chinese section of the city called Chapei were asking to be taken into the International Settlement. Moreover, it is also true that in 1930 Chinese in two hundred villages around Wei-hai-wei, appreciating this business stability and prosperity derived from a foreign concession, petitioned Nanking that the British concession in that port be allowed to continue. Chinese are loyal to China, but once experiencing the benefits of ordered government and the sense of security resulting, they are desirous that it should continue; Chinese living inside the concessions hope for the continuance of their security and their prosperity. Some of the prosperous Chinese in modern business believe it to be so essential that, in spite of their sincere desire that their nation shall be freed from the onus of extraterritoriality, they regret the vigor of leaders whose determination to realize this political, nationalistic objective is so great that they have been forging ahead at all costs. Economic catastrophe, should it come, is assumed by those leaders to be a matter of much less importance than the recognition, or the exercise, of their sovereignty.

If there were only some means by which the evils of extraterritoriality and the odium of the term might be gotten out of the way; and if it were possible to recognize Chinese sovereignty in China and yet for the present preserve such stability in a minimum number of centers as would make it possible for the Chinese to keep the very real beginnings—which are indeed remarkable—of the new economic structure which they have, then something very great for the vital interests of China would be achieved. A layman might suggest new treaties for old; new treaties eliminating sovereign rights of foreign nations in the place of Chinese sovereignty; they might be called commercial treaties; they should be multilateral in character, which in itself would be a recognition of Chinese sovereignty. Their purpose should be to guarantee such conditions as are essential for the

stability necessary to the safeguarding of that nucleus of economic life at present existing until rehabilitation of economic and political life shall be equally well established throughout China. So long as it remains a political matter the situation is uncertain; if it can be made non-political, if it can be dealt with as a business situation, which in reality it is, then some solution may be forthcoming. Can the whole matter be transformed into something like Chinese modern banking that must have its roots in China, its branches in the world of international relations?

After all China is so big and conditions are so varied in different sections, that no blanket formula can possibly be adequate to the whole. Moreover, the numerous problems of China are in such different fields of activity that a political approach, alone, is quite inadequate. The satisfactory arrangements of the oil and tobacco companies in the matter of taxation, for example, were made possible because they were taken out of the political arena and dealt with separately, as practical business problems, which they were. Could one Chinese problem after another be isolated and dealt with in terms suitable to its own inherent demands, an accumulation of successful adjustments might ultimately help to create the world the Chinese covet—an independent, stable, prosperous China.

The Canton group (1931)—perhaps for the political purpose of gaining the recognition of the Powers, perhaps because they believe it to be necessary for Chinese banks and other forms of Chinese business life to be for a time protected within concession areas—is reported to have said that China is not yet ready to take the responsibilities which the immediate abolition of extraterritoriality would involve. Their present program is concerned with "the immediate granting of self-government to the people, with the establishment of agricultural banks for granting cheap credit to peasants, . . . with the inauguration of coöperative societies, with land laws and regulations governing trade-unions."<sup>2</sup> This statement by one of the able friends and loyal followers of Sun Yat-sen, is offered to indicate a pos-

2. From an interview of Mr. Wang Chung-wei with the correspondents, *Shanghai Evening News*, July 10, 1931.

sible view of the problem; a view indicative of a realization of primary necessities in the economic life of China. How strong the Canton group may become, and whether they will be able, should they replace the present rulers in Nanking, to free China from rival military factions, it is impossible to say.

Perhaps this brings us to the question, Is the capitalistic organization of society, with its extreme nationalism, capable of the kind of coöperation that shall replace the evils of extralimity and preserve the essential good? Are the Chinese themselves ready to think in these terms or will they insist upon nationalism first and foremost? They are quite right not to wish to surrender an iota of their sovereign rights even in theory, if there is any chance that those sovereign rights are going to be seized upon by other nationals, to the disadvantage of the Chinese.

The philosophy of Sun Yat-sen and the practice according to his teaching, including the machinery of government already established, offer as wise a program for reorganization within China as seems possible under present circumstances. Even Chinese who would prefer another basis, could they choose, argue quite genuinely that it is wise to build upon the foundation already laid; for that reason they have supported the Nanking Government, even though, to them, it has not been ideal. Meanwhile, before the Period of Tutelage can be safely passed, will Chinese overthrow the present beginnings of Chinese national and international economic life, which is young and consequently insecure, in order to win their objective, political nationalism? This, carried to excess, as it has been throughout the world during the last half century, has become an obsession bordering upon insanity. Will those of the Chinese who share this obsession insist upon the letter of the law in the western sense, making drastic changes to prove their point? If they do they may have a chaos that will be engulfing.<sup>3</sup> In this case capi-

3. The Japanese will, of course, quote the methods used against Japanese rights and business in Manchuria as proof, to them, that this is true. The Manchurian crisis has developed since this was written. That crisis, already (January, 1932), is quoted by some as proof of the folly of Chinese policy, which, by sabotage, especially in the Fengtien Province, would have eliminated foreign privilege. This is probably only half the story, for the Chinese cannot be held entirely responsible for that conflict and that disaster.

talistic society and friends of capitalism may be rejected; the result may be a swing to communism as the way out.

To those who believe in the League of Nations, and who believe that it will ultimately become effective in its regulation of international finance, and who believe that it must and will have power to assist and coördinate various national and nationalistic groups in their struggle for existence, there appears to be a potential solution through methods coöperative.<sup>4</sup> The situation calls loudly for some system which shall replace the "old treaties," and a self-aggrandizing nationalism; it needs multilateral agreements that shall replace the old idea of concert of the Powers which was negative rather than constructive, for by it nations merely sought to keep each other from getting the advantage. The situation is in desperate need of some arrangement that is really coöperative for the economic well-being of all parties concerned.

Throughout this discussion it has been quite clear that honorable business does not depend upon extraterritoriality; but it is not equally clear that personal safety and corporate security, "life, liberty and property" can exist without it. One's opinion on this point varies with one's confidence in the intentions and stability of the present National Government. Throughout the summer of 1931, no matter how noble its intentions, the Nanking Government has had problems almost beyond comprehension. And yet through times similar to these, except for the calamity of the devastating flood, Nanking has achieved much that is remarkable and much that inspires confidence. The Bureau of Inspection and Testing of Commercial Commodities, already mentioned,<sup>5</sup> is an institution of merit and achievement. Organized in March, 1929, it now comprises five departments: raw silk testing, animals and animal products testing, cotton

4. This is not now the case; according to present arrangement the International Bank at Basle, for example, seems to have little more than a speaking acquaintance with the League of Nations in Geneva. Nevertheless, at the Institute of Politics in Williamstown, 1931, such a careful student of international affairs as Dean P. E. Corbett of the Law School at McGill University, outspokenly claimed that it will ultimately be necessary for the League of Nations to become a world organization with effective powers for the proper and efficient coördination of the interests and rivalries of present nationalistic society, both financial and economic.

5. See above, p. 66, n. 5.

testing, the department of chemistry, and lace and embroidery inspection (in process of organization). The same efficient department of government which created this bureau—the Ministry of Industry, Commerce, and Labor—publishes *A Chinese Economic Bulletin* providing economic, commercial, financial, and industrial information relating to the Republic of China. A copy taken at random, the issue for July 12, 1930, contains: "Supplementary Articles to the Provisional Rules and Regulations Governing Registration of Companies and Corporations; Rapeseed Cakes on the Hankow Market; Flax Crops of North Manchuria; Review of the Bond Market; Review of the Gold Bar Market; and Notes,—Commercial, financial, industrial." This last contains an announcement of the inauguration of "The China Institute of Scientific Management, which has for its aim the rationalization of China's commerce and industries so as to increase the country's productivity." In determining a policy for future action by the Institute, Minister Kung urged that the following three points should always be borne in mind:

- 1) Administrative reforms and a fostering of a spirit of morality, loyal service and co-operation between the management and the workers. A proverb says that "To be willing to help others at any time is the highest kind of knowledge;" therefore, it is hoped that capital and labor may work hand in hand for the development of the country's industry.
- 2) Employment of more skilled labor to increase productivity and the curtailment of unnecessary expenses. The fact that output of Chinese commerce and industry is still very small points to the scarcity of skilled labor, and the existence of waste. It, therefore, behooves the country's industrialists, managers and technical experts to find out the underlying cause and provide appropriate reforms.
- 3) Development of the national industries and enhancement of the welfare of the people. In order to remove the economic difficulties, all working for the country's industry and commerce should cultivate the new spirit of social service and have as their aim the promotion of domestic industries and the consolidation of the nation's economic foundation. In pursuing this object, both the Government and the industrial world should work together.

It is this kind of coöperation between government and the industrial world—multiplied a thousand-fold—which might solve problem after problem. Perhaps it is useless to ask a revolution—for the re-creation of China according to the Three

Principles of Sun Yat-sen and the establishment of the Five Power Constitution is revolution—to work by piecemeal methods. Revolution by evolution must be the ultimate way out whether the present Chinese personnel wish it or not; evolution it will be, or complete devolution. The challenge to the present generation of Chinese is to be party to the evolution. It is tragic to hear Chinese of knowledge, judgment, and experience say: "If I am patriotic, and I am, I believe in the Chinese and wish for the recognition of Chinese sovereignty; then I must not object to the present declared program of the men of Nanking in regard to extrality. Of course I do not believe in the sovereignty of foreign nations being exercised in China, especially when it is exercised in defiance of Chinese sovereignty. But if we get a drastic abolition of extrality under the present circumstances of instability and insecurity throughout China, even what we have, which we wish to protect, may be destroyed." Moreover, if the Chinese, especially the rulers at Nanking, believe that the world is, and will continue to be, what it has been—a world dominated by economic nationalism and imperialism, which has seemed to work to their disadvantage—it may appear to them to be necessary to get rid of imperialism at any cost, even at the risk of losing temporarily their all.

If it must be true that there can be no modification, if it is true that there has been no modification of the self-aggrandizing economic imperialism of 1897–99, when it appeared that China was about to be partitioned, or of 1915, when the imperialistic nations were at each other's throats and Japan presented the Twenty-One Demands to China, perhaps the Chinese extremists are right. If demolition must come before reconstruction is possible, then let them burn their house down, and the sooner the deed is done the better. But nowadays reconstructed old houses are very beautiful.

Today, there is in the League of Nations an embryonic world society; there is the record of the Washington Conference that "spheres of influence are things of the past"; there is a Paris Peace Pact; and there are new records of successful coöperative ventures. A beginning has been made. Already Nanking has manifested intelligence in this direction, especially in relation

to the League of Nations and its principle of expert technical advisers: it has been inviting experts to come and advise, sometimes as commissions, sometimes as individuals; they have even invited some of the experts to stay as councilors.

I am convinced that persons inside the Government recognize the need and the value of dealing with Chinese problems in an expert way, as problems of expert business management. They recognize the value of the Secretariat of the League of Nations; in fact in 1931 three important members, including Sir Arthur Salter, were invited to Nanking. This policy might be pursued farther, even toward extensive coöperation, unless the fear should arise that such willingness might be abused or misinterpreted, with the possible result that China might find herself caught, not by old treaties, but by new devices in the name of international coöperation.

When one observes these efforts and knows the desires of the foreign-trained Chinese personnel who are working courageously, industriously, and faithfully to the realization of their ideals, then one believes in the future of China; one also believes in the good intentions of the National Government. But when one looks to the horizon one knows that these efforts are but oases in the desert of chaos. One also discovers that many of these very fine foreign-trained Chinese have been away from their own people and are more different from the Chinese of the interior than they are from westerners. Moreover, the economic problems of the interior are more vast and more fundamental than even they realize. The problem of the National Government of the Republic of China is gigantic.

Nevertheless, the Chinese and the Chinese Government work steadily on at one problem after another. They are pragmatists *par excellence*. For instance, the creation of the Consolidated Tax Bureau,<sup>6</sup> which followed the arrangement between the British American Tobacco Company and the Nanking Government for a stamp tax that should be all-inclusive, indicates the willingness of the National Government to coöperate with foreign business for the adjustment of matters of concern to both. Here, the object was the greatest possible income to Nan-

6. See above, p. 78.

king with the least possible waste of collection, and the lowest possible tax, to the B.A.T., with the least annoyance and delay from collection. The arrangement proved to be profitable to both. All these, and more, intelligent efforts on the part of the National Government may be paralleled by very remarkable health clinics in some of the factories of the Chinese city of Shanghai; there are also very simple and very efficient neighborhood health clinics for children. The health center in Peiping, and the equivalent of a visiting nurses association in connection with it, is an undertaking well thought out and well executed. Its success in inoculation and vaccination campaigns, in screening of food shops, and in school and factory health services is admirable indeed.

The achievement in road building is likewise impressive: "According to the National Good Roads Association which was founded ten years ago under the chairmanship of Dr. C. T. Wang, there are in 1930 in the whole country 84,477 *li* of motor roads as compared with only 2,000 *li* in 1921."<sup>7</sup>

Such enterprises of a scientific, expert character, efficiently executed, give one real hope for China directed by Chinese. In the end all this endeavor is like excavating and reconstructing a civilization under a mountain; the mountain threatens to bury them if the supports at the entrance of the excavation are taken away.

For the purpose of clarifying our own thinking let us look a few facts straight in the face, even if the result is perhaps brutally disastrous to some cherished ideas and illusions. First, in the matter of personal security: In the interior of China today personal security both for foreigner and Chinese is nil; extra-territoriality does not function. Disaster to a foreigner in the interior of China is dealt with through normal diplomatic or consular channels, not by the exercise of any special jurisdiction. If it is safe to go from Peiping to the Great Wall or beyond to Kalgan, it is because there is peace and the local Chinese communities are functioning in normal fashion; it is not because any foreigner wishing to go there has special protec-

7. Min-Ch'ien T. Z. Tyau, *Two Years of Nationalist China*, p. 257, n. 1. A *li* is a third of a mile.

tion. If banditry prevails, the fact that foreigners have special treaties back of them does not make it safe for them to go into the interior. If one is safe in Peiping, perhaps safer than in most large cities of its size the world over, it is because the Chinese are making a worthy endeavor to make it so.

Not so long ago, 1926 to be exact, when there was no Blue Express from Tientsin to Nanking, on account of civil war, the only means of transportation from Tsing-kiang-pu to Yangchow was down the Grand Canal. During the state of war then existing everything was commandeered except a Standard Oil launch flying an American flag and drawing two or three native boats filled with oil cans; it passed through the canal untouched. Today the big Standard Oil boat that goes up the Yangtze in order to reach agents and dealers inland, is armored; it is spoken of as the "Standard Oil Gunboat." Each time it returns to Shanghai it brings accounts of being fired on quite persistently throughout its journey beyond Hankow.

Incidents of safety or the lack of it can be multiplied; on the whole, stability rests in the power of the National Government to secure recognition of its authority. The practical person, Chinese or foreign, in China in 1930-31, has, therefore, held that the best policy is the policy that would strengthen Nanking. But Nanking has chosen to be rid of extraterritoriality immediately. To all intents and purposes extraterritoriality is gone, except within concession areas. The need seems to be to get rid of the name. Could that be possible, could it be possible to recognize that it is gone, there would be great psychological advantage to the Chinese. Even the Chinese in the interior who are getting their living in the main through coöperating with foreign businesses are eager for the abolition of extraterritoriality and sometimes of the foreigner, on the theory that then they would have a chance. In reality they have their chance now. The recognition, therefore, of facts as they are might well simplify the situation.

The greatest need of China today is for an economic rehabilitation that shall make it possible to find ways and means of earning a living. This has been accomplished to a remarkable degree by the famine-relief reconstruction program at the north

within the provinces of Hopei and Shansi, in particular.<sup>8</sup> Here, well digging, the construction of river dikes, and irrigation reservoirs are gradually protecting the region from flood and drought. Road building has made the regions accessible for the importation of supplies and for the transportation of produce. Drought-resistant seeds as well as irrigation methods have improved the yield per acre in agriculture. Bandits have found employment in industry. The Famine Relief Commission has also succeeded in establishing a rural coöperative credit system in Hopei which is ready to be taken over by the Government as a permanent part of their financial organization. But like the health clinics and other efforts at improving the general welfare, all these achievements are but illustrations of how it can and should be done throughout the vast interior. This economic reconstruction which is imperative will be much more difficult of accomplishment if the economic and financial life which China now has is molested. To increase the area of insecurity is to increase the burden of Nanking.

If the concession areas could continue as self-governing units protected from the vagaries of reckless public finance, but paying a fair return to the Government—perhaps to the Consolidated Tax Bureau—in recognition of its sovereignty; and if they could be protected as they now are from the disaster of factional warfare their security might be retained. If these units could function with courts as remarkable in their efficiency as is the Municipal Court in Shanghai, and if the public works could be as well done as in Tientsin, it might be possible, with fair opportunity for Chinese participation, for the Chinese to get further experience and build comparable municipal units of their own elsewhere. These self-governing units should be really international in character, even as the business that centers there is international. In no one of them should the sovereignty of any non-Chinese nationalism prevail. Settlements really international in character with a consultant from the League of Nations as adviser—or even temporarily under the

8. Famine relief of a constructive character has also been carried on in Honan, Shensi, Hupeh, Yunnan, Chahar, and Kansu. *Annual Report of China International Famine Relief Commission, 1930.*

League—organized for preserving the vital interests of all concerned would be a new venture in international coöperation.

The truth is where two civilizations are meeting, neither is adequate to the demands of the other. What the Chinese are asking is a definitive settlement that is western; what the foreigners are asking—if they are not so unreasoning as to think that occidental ways and occidental institutions directed by occidentals comprise the *summum bonum*—is some compromise adjustment, such as they have adopted in business relationships, which is an essentially Chinese method. In reality here is an amazing collision of two civilizations—Chinese and European—each deserting its own methods of thought and adjustment in defense of itself. That cannot work.

The solution lies in something new in the world, something which is adequate to the new circumstances. Coöperation has been proved to be the basis of human well-being, in the family, in the community, in the state; ultimately it must be applied between states. This means a desertion of economic nationalism for economic well-being. Coöperation in such terms as are adjusted to the particular situation is the only principle that can reconcile conflicting demands. The problem is twofold: the adjusting of old and new within China itself; the adjusting of China, not to the old order without, but to an outside world that is itself sorely in need of a new and better order, that of co-operative society. It were better for China, if possible, to forget the old economic nationalism and imperialism, and build into—or with, or perhaps for—a new order of genuine coöperation that must come, the world over.<sup>9</sup>

9. Should such a solution undertaken south of the Great Wall prove to be workable, it might in time become the basis for administration within Manchuria. Meanwhile, immediate readjustment in Manchuria has become so imperative that if some international administration shall be agreed upon through the investigation commission appointed by the Council, it may become the basis for reconciling conflicting sovereignties for the protection of life, liberty, and property elsewhere in China. On the other hand, adjustment in Manchuria may be suited to Manchuria alone, and the solution of extraterritoriality and special rights remain a special problem. The method of approach in either case was analyzed by Professor Shotwell when he explained (*New York Times*, December 20, 1931) that possible success for the League Commission in Manchuria was a matter of procedure. He said:

"Over against this time-worn method, which tends toward conflict by an attack upon the character of men or nations, the technique of inquiry revealed it-

With such a new basis for the existence of the foreigner in more truly international settlements, it should be possible to get rid of the abuses now practiced under cover of extraterritoriality, and at the same time insure the continuance of such conditions as are necessary to the re-creation of China into a vital entity. Recalling the western legal codes and westernized judicial practice, which have been adopted, in part, to meet the stipulations of the Powers for the abolition of extraterritoriality, it now appears that when planted on Chinese soil these practices become Chinese; they do not prove to be what the West expected them

self in the discussions of the Institute of Pacific Relations as offering an entirely different approach to the problems at issue. . . . If it is a railroad question which is under discussion, it should be taken up in terms of railroadage; if it is a matter of justice or police, it should be dealt with as a question in the field of jurisprudence; if it has to do with commerce, then commercial experts should report upon it with reference to communications, markets and the like. Haphazard generalities must make way for technical analysis. This is what the commission of inquiry will be obliged to set going if it is to fulfill its mission as the instrument of the League of Nations. It would be utterly useless for it to investigate motives or deal in such vague generalities as are covered by the term 'imperialism.' It must arrange for technical experts to take up the South Manchuria Railway as the directors of that road would view their problems under normal as well as abnormal circumstances; it must arrange for similar studies of police in connection with courts planned to meet the conditions of a slow transition from extraterritoriality to national sovereignty. For every one admits that twenty-five to thirty million Chinese in Manchuria will effectively keep that land Chinese. . . .

"When analyzed in terms of such an inquiry, the 'Manchurian problem' breaks up into a number of problems, for each of which a settlement can be found which would be of advantage to both Japanese and Chinese. Take the question of banditry and the lack of adequate police. It is clear that this can never be fully dealt with by the police guards of a railway. . . . The Chinese also would have much to gain in having this problem properly disposed of, for it must not be forgotten that the vast migration of Chinese which has filled up Manchuria at the rate of about 1,000,000 a year is composed of those who have fled from civil war and anarchy in Shantung as well as from floods and other calamities. These peasants need adequate protection as much as do the Japanese. Just how the reform can be achieved is not yet clear to any one, but it is perfectly clear that it can never be found by way of mutual recrimination of Chinese and Japanese, nor by dealing with the question apart from the larger issue of extraterritoriality. This means, in a word, that the protection of Japanese life and property in Manchuria is but a more acute form of the same problem which confronts American and British residents of China elsewhere and that the solution lies in finding some successful substitute for the present inadequate method of administering and safeguarding justice as between Chinese and foreigners. In view of the special interests of Japan in Manchuria, this will probably involve special administrative arrangements of a distinctly political color. But in that twilight zone of sovereignty where foreign powers insist on a degree of police protection not hitherto accorded by the local government to its own citizens we are not yet beyond the experimental stage of international planning, either in Manchuria or elsewhere."

to become. In practice, business contractual relationships in China are quite apart from the legal framework that is being superimposed. Contractual relationships, business and otherwise, are what they are because China is what it is.

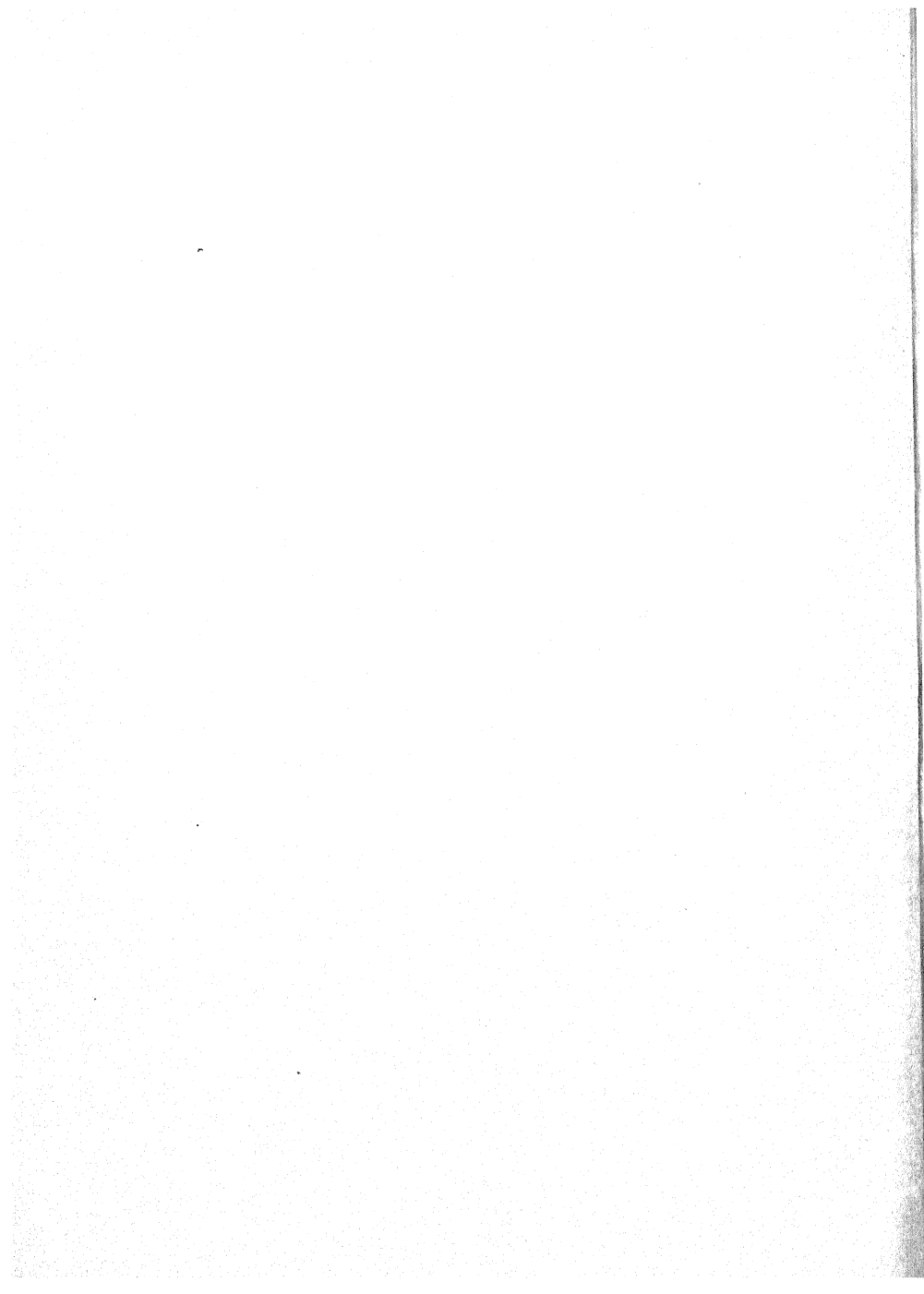
Moreover, it does not appear that business contractual relationships now depend upon the special consular jurisdiction, which is extraterritoriality. Personal security, however, might be much affected and the very existence of business threatened by a changed status within concession areas. Therefore, some device adequate to the circumstances is necessary to prevent disaster; older devices belonging to former conditions have been tried and have failed. Consequently, it appears that with a well-adapted coöperative adventure in concession areas, it might be possible to get rid of the hated word extraterritoriality. Elimination of the word, and of the evils that are practiced under cover of its technicalities, would of necessity bring real satisfaction—psychological and material—to the Chinese. Moreover, they would be securing their own national interests; and at the same time they would be building into a new international polity.<sup>10</sup>

10. January, 1931. It is to be feared that the Chinese experience in Manchuria after the Council's resolution of December 10, 1931, will cause Chinese to scoff at these suggestions which recommend coöperative methods for the solving of China's problems. In the face of the irony of the situation these conclusions are still offered in the confident belief that it is the only rational way out. The need is not only for coöperation, and machinery for coöperation, but for the will-to-coöperate on the part of everybody. See Conclusion, Sec. V, p. 246.

NOTE. Private information has it that the British in early November, 1931, agreed with the Chinese that within five years they would surrender concession areas, and at the end of ten years would relinquish special privileges in Shanghai. In view of the present limitations and inadequacies of the League of Nations, more time may be necessary to effect the transition to full Chinese sovereignty: time for the Chinese Government to put its house in order; time for foreigners in concession areas and Chinese to work together in the establishment of those units which, resting upon mutual coöperation, would exist for mutual benefit.

### III

## IN SUMMARY AND IN TRANSITION



## IN SUMMARY AND IN TRANSITION

**I**N brief, then, the issue in China today is clearly: imperialism or international coöperation? Communism or international coöperation? Anarchy or international coöperation?

The old imperialism wrought disaster. "Unequal treaties" and humiliated, disorganized Chinese society, even though they may not be due to imperialism alone, remain, nevertheless, tangible evidences to the Chinese of the injustice that has been done to them irrespective of any responsibility on their part for a decadent economic and political organization of their society. These grievances of the Chinese and the issues they raise are not merely the basis for conflict between China and the Powers; perhaps they may become the basis for conflict between divergent economic and social systems.

Yet communism offers no solution. It is only another basis for conflict: not a conflict against abuses but a program of destruction which would tear down the good as well as the ill which the Chinese possess in their present economic life, organized on a capitalistic basis. More destruction in China would mean a latter day worse than the first. It is salvaging that China needs.

Anarchy appears in general to be the present intolerable state within China, Manchuria especially, and in international affairs. Whether it is due to weak government in chaotic China or to the uncontrolled militarism of a Japan too impatient for the attainment of her own self-sufficiency, it is impossible that it should be allowed to continue.

The only alternative to each is international coöperation. In practice coöperation works between individual foreigners and individual Chinese, between groups of foreigners and groups of Chinese. The need is that coöperation become official, become national and international. Beginnings may be feeble, they may be neither satisfactory nor adequate, but beginnings must be made. Logically, since imperialism has failed and anarchy is the result, and since communism, having a destruc-

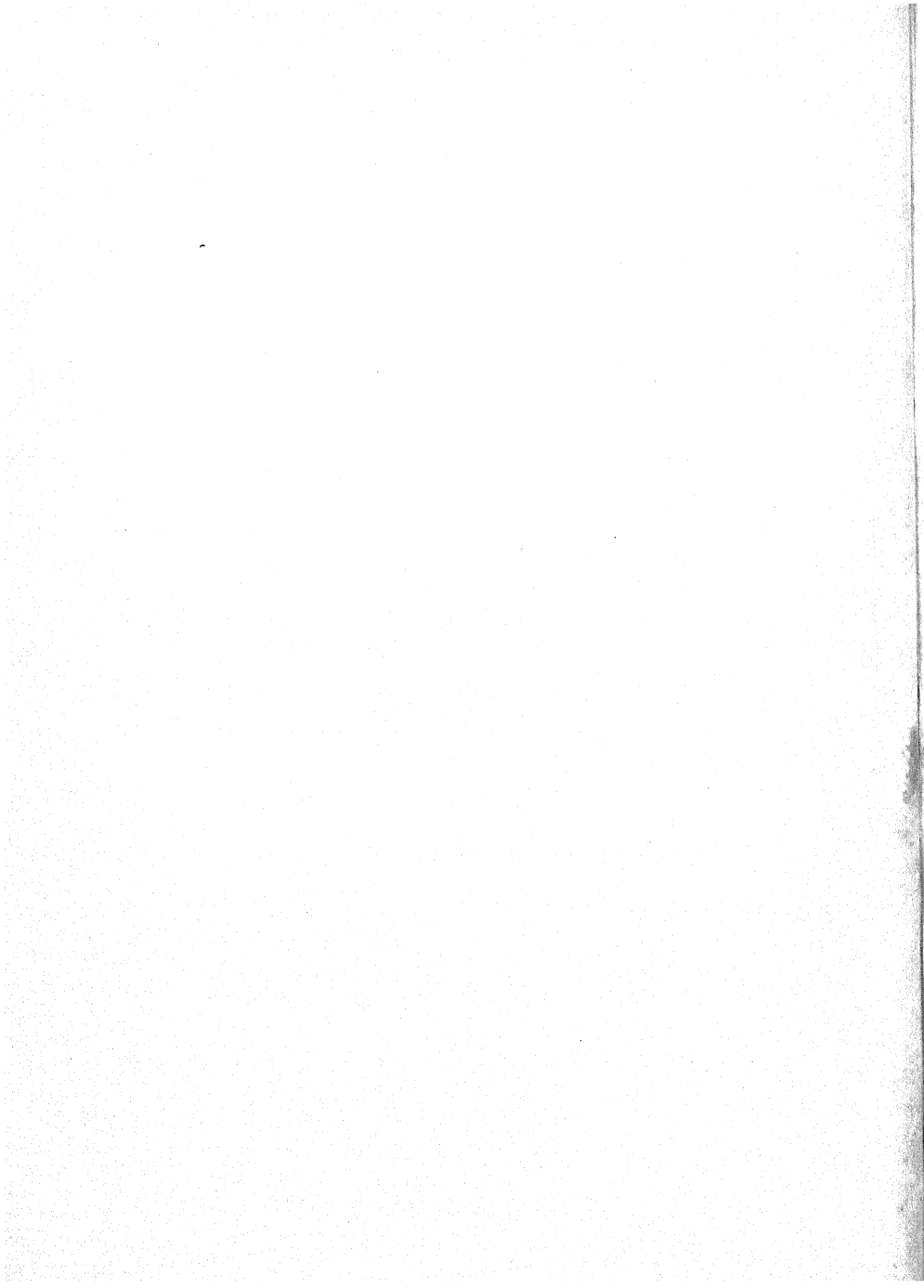
tive program, seems unsuited to the situation, coöperation remains the one basis for intelligent endeavor. This is said deliberately, in the face of Chinese disappointment that the League's Council failed to exercise superhuman wisdom and power in their behalf before it adjourned on December 9, 1931.

By international coöperation we obviously include conference methods of discussion, and agreement which shall be based upon expert fact finding, arbitration, and judicial review. In this connection, however, we mean something more than the adjustment of differences or the formulation of a policy, we mean the administration of units with the assistance of international coöperative machinery. Machinery was evolved for the exercise of extraterritorial jurisdiction; in like manner suitable machinery is essential to the "cultivation of right relationships" during the period of readjustment when extrality is being outlawed. Such machinery should naturally be under direction of the League of Nations, since the League is the international organization already in existence.

If the above argument has any merits, then it is reasonable to ask: How ready is Japan to coöperate? Must the military demonstration in Manchuria in 1931 remain all that is to be said about Japanese international polity? Or, is it possible for the moment to forget Manchuria, and follow the development of Japanese interest in, and attitude toward, international affairs which has paralleled her membership in the League? What has been happening in Japan throughout the decade between the Washington Conference, when Shantung was surrendered and the Treaties of 1915, in the main, retained, and the present demonstration or reappearance of the imperialism which preceded 1921? Is coöperation possible or practicable in eastern Asia?

IV

INTERNATIONAL COÖPERATION *VERSUS*  
MILITARISM IN JAPAN



## CHAPTER I

### IMPORTANCE AND TIMELINESS OF THE INQUIRY

THIS study deals with a problem of fundamental importance in international relations. It is an effort to estimate how far the Japanese people and the Japanese Government may be able to go with the new devices of international dealing with which the world is now experimenting. Will Japan, in the near future, desert the age-old politics of power long practiced by the nations now her colleagues? Will she adventure into the newer methods of conference, conciliation, arbitration, and judicial settlement? This is a problem of transcendent importance because of the position and influence of Japan as a world Power; it is of immediate practical concern because two nations in revolution, China and Russia, are on her frontier; and, finally, it is a matter of supreme interest because of the unique internal history of that island kingdom. In addition, the recent Manchurian crisis has furnished a test case, so to speak, of Japan's loyalty to principles of the League of Nations and the Covenant; it has also become the occasion for measuring Japan's devotion to principles of peaceful adjustment between nations, which is becoming more and more a popular ideal.

The metamorphosis of Japan from a feudal state into a constitutional state, from an Asiatic people into a cosmopolitan nation, from an agricultural society into a developing industrial one, is almost a miracle in our modern world. All this, begun in the Meiji Era, has taken place in little more than half a century. A society which seemed inherently rigid and conservative is now in touch with the whole world's cultures, and is responsive to new programs for the reorganization of our international and economic society. A resultant problem is before us. How far can, or will, this changing Japan take on the full measure of coöperation in international affairs? Will she finally

rule her Military and not be ruled by it? Is she at all prepared ultimately to employ pacific means of settlement for the adjustment of international rivalries? Are there evidences which would encourage us to believe that she will ever trust arbitration, conciliation, or judicial procedure for the adjudication of disputes?

At the very beginning we must remember that the Japan that has risen to rank among nations achieved recognition through military success. Moreover, the recognition of her equality among the nations rested upon a militaristic program such as has for ages been the implement of national policies.

It was by her military strength that she defeated China in the Sino-Japanese War, and later extended her jurisdiction over Korea, thus protecting herself from the menace of that peninsula, which imperiled her archipelago. Ten years later, because she had developed her military power and enlarged her navy, she was able to make a stand against the encroaching imperialism of Russia in Asia. When the Trans-Siberian Railway was completed, its thumb and finger, the one extending to Vladivostok, the other, *via* the Chinese Eastern Railway, to Port Arthur, threatened to grasp the intervening territory; Korea, even Japan itself, might next be considered advantageous military bases for the expanding Russian Empire. The imperialistic projects of Russia in Manchuria, their lease of Port Arthur, and the consequent strengthening of Russia in Asia, the Japanese believed threatened their very existence. When Russia overstepped, when she failed to live up to her pledges to evacuate Manchuria, Japan protested. But her protest was effective only with the aid of her army and navy. Japan's military defeat of a European Power won recognition from other European Powers. Thenceforth Japan was recognized as a world Power.

In the World War she was counted among the Allies. During that war she found herself in a position of advantage in the Far East; European Powers were straining all their resources elsewhere, and China was in a state of impotence.

Obviously, Japan conceived of the World War as a legitimate instrument of policy having political uses, and the motives of her participation in it were power and territorial aggrandize-

ment. Shantung she demanded from the Peace Conference. Then, as part of her reward for having stayed with the Allies and for having lent them her military support, Japan sat in the Supreme Council at the Paris Peace Conference. Thereafter she became a mandatory Power responsible for islands in the South Seas, thus ranking with England and France.<sup>1</sup> From the Supreme Council at the Peace Conference she naturally stepped into the position of Permanent Member of the Council of the League of Nations.

Thus her recognition and her prestige among nations rested on her successful use of military force.

Yet it is of this newcomer among the Powers, whose presence was thus heralded by military salute, that we are asking, Will Japan desert the age-old politics of power long practiced by the nations now her colleagues? Will she adventure into the newer methods of conference, conciliation, arbitration, and judicial settlement? At the moment of writing the answer may appear to be negative. That, however, for reasons which we shall present, may not be the definitive answer.

It may be presumptuous to expect Japan to desert a program that has served her so well. It may even seem idle to inquire what Japan will do with methods which are pioneer in the world of international affairs, especially when in Japan, as in France and other nations, there were those who subscribed to the new philosophy not out of conviction, but because the League forced them to profess it in spite of their militarism, their skepticism, or their selfish interests. Nevertheless, since Japan has been party to the League of Nations and consequent experiments in world organization within the same half century that witnessed her military, industrial, social, and political achievements, it may not be unreasonable to attempt an evaluation of the forces that are now determining, and must henceforth determine, her international polity. It may, perhaps, be assumed that it is easier for a nation that is in transition from an old *régime* to a new order to undertake still another new venture, than it is for nations practicing longer-established methods of procedure to change in any one particular. On the

1. See map, Isaiah Bowman, *The New World*, p. 613.

contrary, it may be argued that, in spite of this greater adaptability, lack of experience may make it unwise for the newcomer to risk her present position by becoming a pioneer among nations, committing herself to an ideal program over which her strongest neighbor, the United States, hesitates when the ideal is defined in the League Covenant, to which her nearest neighbor, China, has only recently committed herself and that for her immediate good, and of which her third neighbor, Soviet Russia, is blatantly scornful.

Meanwhile, it should not be forgotten that life in Japan is amazingly complex and multiform; that many of the grave problems within her borders are definitely influenced by circumstances outside her own household. The ability of her people to earn a living is dependent upon nearby sources of raw material, and upon markets, open and accessible, for her manufactured articles. On the frontier of Asia, where East and West are meeting, she is an oriental nation, partly westernized, fronting China and Russia, both in the process of radical readjustments to modern industrialized and nationalized world society. Unstable conditions within China, in particular, disturb the trade relations essential to Japan's economic prosperity; new theories of social and political organization unsettle relationships on the Russian frontier. Moreover, Japan fears the competition of powerful rivals in her nearest market, Manchuria. By what methods then, it is pertinent to ask, will she deal with her oriental problems?

As a member of the League of Nations she is closely in touch with the West. Practices and privileges by which the European nations have achieved success are known to her, and are held as precedents for her own action in similar circumstance. Will she ignore the methods of the past, or will she demand for herself the right to act according to theories not yet entirely repudiated by her western models—the military character of which methods is also inherent in her feudal traditions? Will she accept the idealism of the Covenant of the League of Nations and the Paris Pact, or will she, while formally assenting to them, attempt to safeguard her position by adhering in practice to tried theories and techniques of the old order?

Whatever policy she pursues, it will be of her own deliberate choosing. For her motives she will not willingly tolerate questioning; for her practices she will refuse investigation. As an equal among nations, resenting criticism, she will follow unswervingly her chosen course. Consequently, the factors at work within her body politic which shall determine her policies are our concern. We must understand these if we would comprehend the significance of her declarations, or the principles for her actions, when crises occur. What her international polity shall become will be determined by her conception of what will best serve her vital interests. It appears, therefore, to be a matter of real consequence whether Japan will adhere to the militarism which preceded the Washington Conference, or whether she will ultimately adopt newer methods of conciliation, arbitration, and judicial settlement. It is hardly too much to say that whichever Japan may choose to do will materially influence what the rest of the world will do.

## CHAPTER II

### ASSETS FOR JAPANESE LEADERSHIP IN PROGRAMS FOR INTERNATIONAL UNDERSTANDING AND COÖPERATION

[This chapter and the three following deal with the situation before the Manchurian events of September, 1931. Those events and their effect upon Japanese political development and international polity are presented in chapter vi, entitled "September 18, 1931." With few exceptions, which will be obvious, or even dated, chapters ii-v remain as they were written in August, 1931. They are a description of factors and tendencies within the life of contemporary Japan, and are the background against which we may measure the disaster to developing parliamentary government and to developing techniques in international relations if Japan remains long under military dictatorship. On the other hand, if she finally rejects the leadership of her modern Military, whose Ministers of War and Navy are still "clansmen," descendants of her feudal *régime*, the content of these chapters will reveal the character of modern public opinion and political practice, which, together with the demand for peaceful industrial development and the opportunity to earn a living, should be important factors determining Japan's future development.]

THE character and personnel of leadership within any nation are always significant; they are often primary factors in the formulation of national policies. Japan has been especially fortunate in having remarkable leaders. Their character, courage, and vision have been her greatest asset, throughout the Meiji Era and since. It may be said of this nation, in particular, that among her civil leaders have been men who understand the political, social, and economic forces at work in other nations. This has been true to a greater extent than in the case of most other countries because, for half a century, her young men have been sent abroad to observe and study what has made other nations great and powerful; and they have returned to teach and interpret. This deliberate policy and intelligent practice have been in conformity with the political and social program proclaimed by the Meiji Emperor at the very be-

ginning of his reign. In the fifth declaration of that rescript we read: "Knowledge shall be sought for all over the world, and thus shall be promoted imperial polity." The Japanese, in consequence, have undertaken as a social duty to their own country the study of the political, social, and economic forces at work in other nations in order to apply them at home. This preoccupation has often led to the realization that forces at work in different nations are, fundamentally, the same. As a result they have perceived the advantage to all of international coöperation; they have at times even lamented the limited vision elsewhere that postpones its realization. These experienced travelers and (in the widest sense) students have been in positions of influence: older men among them, pioneers, so to speak, have been in the House of Peers; men of middle age have been found in the non-political posts of the foreign office and other governmental departments; they were professors in the Imperial University, newspaper men and editors, business men and bankers. Nearly every walk of life has come under their influence. If a man distinguished himself in the service of his Emperor in any capacity—political, industrial, or artistic—his reward was often a commission to go abroad, thus enabling him, already tried and approved, to profit by knowledge of foreign ways, and, in consequence, to make interpretive contributions to his nation. If a great building, like the new House of Parliament, was to be constructed, the work was undertaken only after extensive study, to the intent that the new enterprise might profit by the experience or efficiency of others who had gone before. So also in the rebuilding of their national polity, as in the rebuilding of their leveled cities, the Japanese have learned from the whole world.

International acquaintance has been the *sine qua non* of that renovation in their national life which is called the Restoration. The Restoration, in 1868, was that significant event in Japanese history when the regent, the Tokugawa shogun, restored the power within the state to the Imperial Line. The great Tokugawa shoguns, hereditary military feudal princes, had ruled Japan for two and a half centuries. The Emperor, the civil ruler, was thereafter to be supreme. Liberal, even radical reformers,

among the clansmen, under the leadership of Prince Ito dominated. Imperial advisers tried to find ways and means for making Japan an equal among the Powers. A constitution was adopted in 1889, reforms of all sorts instituted, popular education undertaken. If, in the twelfth year of the League of Nations, Japan finds herself held back from that international co-operation professed by the nations now her colleagues, it may be because she is near neighbor to those who have not yet the same kind or same degree of national and international experience which she, conscious of her own superiority, holds to be essential to the maintenance of international understanding. She may believe that conference and conciliation are suited to European nations with stable governments, but that coercion is still, as it was in the nineteenth century, the language that is understood in Asia. It may also be true that certain militarist leaders among the Japanese, who acted independently of the policy of the civil government, have endeavored to safeguard their nation against policies, on the part of China and on the part of their own government as well, which in their judgment seemed to hamper their national economic life and essential economic development. Whatever the motive, the episodes of military demonstration and domination in Manchuria have raised problems of serious consequence to her national and international policies. Is this military phase temporary? Is it a reactionary pause in the evolution of parliamentary government and coöperative international policy? Or is it inherent and permanent?

Because of these questions this evaluation of assets for Japanese leadership in programs for international understanding and coöperation becomes imperative.

Again, and to repeat, an acquaintance with the personnel of national leadership is necessary in order to understand the real trend of Japanese policies. Throughout the progress of constitutional reforms and democratic tendencies, certain Japanese have had, and continue to have, influence out of all proportion to their numbers or even their official position. The rule of the Samurai in the feudal sense has gone, but the Restoration preserves a counterpart in the influence of her internationally ex-

perienced intellectuals. It is remarkable that Japan should have so many eminently qualified to interpret and lead, and that within the very complex life of modern Japan, with its political unrest, constitutional struggle, industrial transformation, economic burdens, educational problems, and social ferment, these should have exercised so potent an influence.

Among those who have had great influence for international coöperation has been that remarkable personality, Dr. Inazo Nitobé. One of Japan's pioneer students of the literatures, the political sciences, and the cultural inheritances of the various nations at the West, he has had almost prophetic insight into the possibilities for world coöperation which may ultimately develop from the beginnings made in Geneva in 1920. As First Assistant Secretary General of the League of Nations, his particular responsibility was to study the numerous implements for coöperation already existing—the International Red Cross, the International Postal Union, the Institute of Agriculture in Rome, the Parliamentary Union, and others to the number of three hundred or more. The correlation of these activities with those of the League was a matter for his quiet endeavor.

In the early days of the League, Japan had no particular interests at stake. European politics were quite remote from matters of her immediate concern in Asia. If it had not been for the sincere devotion of Dr. Nitobé to the ideals of peace and ultimate international coöperation, one might almost have said that Japan was in the League because League membership was *comme il faut*. She was not led, as was France, by the sheer force of circumstances to seek security by way of the League, and ultimately to use its offices for new kinds of protection essential to her prosperity. Throughout the early days, therefore, Japan was able to gain that prestige which naturally came to her from the recognition of her high position at Geneva, especially as *the* Oriental on the Council. Her place on the Secretariat was in the non-controversial realm of intellectual coöperation; her distinguished representative, Dr. Nitobé, consciously avoided drawing attention to himself by any outstanding challenge of existing situations. Japan thus got the utmost

in credit for membership without intruding herself into the councils of the other Powers, except when invited.

Granting that such a policy in Geneva was as appropriate as it was prudent, one may rightfully ask how far it schooled Japanese at home, or even the Japanese Government, in the fundamental principles for which the League stands, and how far Japan's political policies were reshaped during those years.

In spite of all opinions to the contrary, something really did happen in the world when the nations signed the Covenant of the League of Nations. The high contracting parties covenanted "to promote international co-operation, and to achieve international peace and security by the acceptance of obligations not to resort to war, by the prescription of open, just, and honorable relations between nations." These pledges have remained a challenge to the purposes of nations. Moreover, whether they would or no, the necessity of avoiding future conflagrations has drawn them steadily toward the fulfilment of their program; and the increasing realization of their crushing financial burdens, together with the *impasse* existing in the present economic order, are forcing them to seek a solution through the instrumentalities of *La Société des Nations*.

The Japanese watched the early negotiations; they learned much; all the world was learning, in some cases actively, in some passively. For a long time the League seemed to be concerned only with European situations. By the time affairs in Asia began to come within its horizon, ideals of coöperation, the practice of conference, experiments in conciliation and arbitration had become matters of experience. Throughout Europe these new techniques were being consciously practiced; the necessity for finding a better way was being recognized; and a wave of humanitarianism, at least among thoughtful people, was following in the wake of the World War. All this also held true in Japan.

Perhaps full realization did not come until after Dr. Nitobé returned to Japan and undertook to explain it all to the Japanese people. His exposition of the ideals of the League has been a contribution to the cause of international coöperation quite comparable to his work as First Assistant Secretary General at

Geneva. Speaking with a voice of authority on a matter dear to his heart, he has influenced government officials and the upper-class point of view in so skilful a fashion, and to so remarkable a degree, that, it would seem, the resulting acceptance of the idealism involved has gradually been taken as a matter of course.

At present he holds confidently to the belief that international coöperation will come; ultimately it must come; there is no other way for the good of all concerned. And with a power of speech that can stir to action or bring tears to the eyes of those who listen to his appeal to their loyalties, he continues at Imperial request, from the Hokkaido to Formosa, his campaign of education for constructive national policy.<sup>1</sup>

Other men, who likewise have participated in activities at Geneva, have also contributed their interpretations to developing public opinion in support of specific coöperation with activities of the League. In this connection it is a matter of no small consequence that the present Prince Tokugawa, a lineal descendant of the great shoguns, and President of the House of Peers, is honorary president of the League of Nations Association of Japan.<sup>2</sup> Moreover, even contemporaneous with incidents of friction in Manchuria during the summer of 1931, Mr. Yukio Ozaki, a member of the Japanese Parliament for forty years, made a speech in Osaka in which he asserted that nationalism was useful in an old world, as feudalism was useful in a still older one,

but now that the world has become so small the narrow kind of nationalism is out of date [he said]. All empires and nations are founded on might, instead of right. Unless this fundamental condition of existence is reformed, the unfriendly spirit toward each other cannot be eradicated. Let us try to make all the nations of the world stand on a moral basis by accepting the International Court of Justice and by

1. It is reported by an American, who was present at a big meeting in Osaka on November 10, 1931, that after several speeches, militaristic and jingoistic in tone, Dr. Nitobé, the last speaker, allowing that the Council of the League had made mistakes which he characterized as the League in foul weather, made a plea for continued loyalty to the League of Nations and its principles of coöperation, in foul weather as well as fair. It is also reported that pretty general applause attended those remarks.

2. The power and influence of this association will be described below, pp. 151 ff.

changing the educational system from a narrow nationalism. All nations ought to stand on a basis of friendship and good-will instead of jealousy and enmity. Peace and security can only be obtained through friendship.<sup>3</sup>

Two great practical interpreters of these ideas of conciliation and coöperation between nations are Baron Shidehara and Mr. Inouye.<sup>4</sup> Baron Shidehara is connected with big business through association with the great Mitsubishi Company, which represents the large shipbuilding interests and import-export business as well. As a result of expert business experience he has known well the commercial needs and consequent commercial program of modern Japan. His part and his leadership in policies conciliatory and coöperative are almost identical with Japan's use of the newer techniques in international relations since the Washington Conference. Mr. Junnosuki Inouye, Finance Minister in the Minseito Cabinet in which Baron Shidehara was Foreign Minister, has had equal influence in winning coöperation and understanding from the United States and European countries. Mr. Inouye, formerly President of the Bank of Japan, is experienced in finance; in consequence he held the confidence of international bankers and, therefore, invited their support to Japanese economic and financial policies. These four illustrious leaders—the publicist, the politician, the business man, and the banker—are typical of many who, because of their experience in public affairs, in business and finance, and in international relations, are committed to the implementation of national policy by the newer techniques of conference, conciliation, arbitration, and judicial settlement for the peaceful adjustment of international rivalries.

The wide and rapid dissemination of ideals in harmony with the principles of the Covenant of the League, and the existence of a parallel knowledge of important international events have been made possible through the Japanese press.

In her press Japan has been unique.<sup>5</sup> The novelty is that it

3. Quoted in the *New York Times*, October 25, 1931.

4. Since this was written, the tragic news of the assassination of Mr. Inouye (February 9, 1932) has been reported.

5. This describes the press until the military domination of Japanese policy, September, 1931.

has been both independent and intelligent. The reason for such distinction is in the fact that the editors have been free agents; they have not been owned or influenced by big business interests; and the owners of the papers have not dictated the policy of the editors. The editors, in turn, like the civil servants (not political servants), have been interested in constructive programs of government. Leadership here is almost a part of the influence of her intelligentsia, in fact, the personnel frequently overlaps. All this has been as true of the English press in Japan as of the Japanese press itself. The English press has been, indeed, remarkable for the amount and significance of its foreign news, which has manifested an interest in international affairs and in international coöperation that has been truly phenomenal.

Few papers in the world have held a better view of world politics than the *Japan Advertiser*. Its editor has had a sense of news values that has exhibited foresight and penetrating insight. The reporting has been clear and simple, editorial comment courageously independent. Moreover, it has published daily, without comment, excerpts from editorials of other journals, Japanese (in translation) and English, even though their opinions might differ radically from those of the *Advertiser*. The constant reading of such a journal must have kept its clientele conscious of significant events and trends the world over, and should have given them a sense of interrelationships in world affairs. The Tokyo *Nichi Nichi* and the Osaka *Mainichi*, two journals published by the same editorial staff, have been likewise distinguished in these particulars. It is interesting to note that the Osaka *Mainichi*, which boasts the largest paid circulation in the Far East, carries the motto, "A national newspaper for international readers." The great newspapers in the Japanese language, the *Asahi Shimbun* of Tokyo and Osaka, the *Nichi Nichi Shimbun* of Tokyo and the *Mainichi Shimbun* of Osaka, friendly rivals and close competitors, have been like-minded in regard to public policy. They and the *Jiji Shimpō*, an influential conservative journal of Tokyo, in their own way have been compeers of the *Advertiser* and of the other Japanese journals published in English. The proportion of local Japanese

news must, of course, be greater in the vernacular press than in the English press; yet the influence of both has been definitely for developing friendship and understanding between nations. The *Asahi Shimbun* has had the distinction of publishing the contributions and editorial comment of Dr. Minoru Mayeda, who is a liberal, and a professor of International Law in the Imperial University. Through his contributions the *Asahi* has definitely influenced the thinking of Japanese intellectuals.

Newspapers of less able editorship have had very limited circulation. In consequence it is possible to say that through the Japanese press the rank and file in Japan have been educated to support conciliatory policies in general; the people have been taught by reiteration that more can be done through international friendship than through force. Newspaper editors even make the proud boast that the battle over the London Naval Treaty was won by the press; that the popular demand, following the lead of the press, made the passage of the treaty inevitable. The same was also true of the acceptance of the Paris Peace Pact. Such a powerful press has been made possible because Japan is both literate and newspaper-minded; moreover, the custom of following leadership, due in part to long-established paternalism, has given the press a real opportunity which is both unusual and ideal.

The fact that the Japanese press has supported Japan's recent (1931-32) attitude in Manchuria, and her drastic military discipline of the Chinese Government and Chinese army units in the Three Eastern Provinces, may seem to be inconsistent with the general editorial policy just described. Such a conclusion, however, does not necessarily follow, because Manchurian affairs are held to be in a category by themselves.

Meanwhile, it remains worthy of note that on minor questions, detailed matters of administration, as well as great questions of public policy, a courageous editor of the *Asahi Shimbun* might even criticize inadequacies of a department of government, with the result that such a department would mend its ways, and even thank the editor for the suggestions offered. In this connection one should not fail to give due credit to the experience more than one editor has had in the methods of pub-

licity practiced at Geneva, as, for example, Mr. Tamon Mayeda (formerly of the International Labor Office) and Dr. Inazo Nitobé, editorial writers on rival staffs. Here again Japan has obviously profited from the experience which her leaders have gained during their life abroad, as observers or in official capacity.

If this appears too ideal a picture of the Japanese press, it may be said by way of qualification that there have been Japanese complaints that the press has been run for profit, that it has printed much advertising and sensational news, and that there has been some governmental censorship. Facts concerning discontent with Japanese rule in Chosen (the Japanese name for Korea) and Formosa, for example, might have been restrained; in the main, however, censorship has usually been confined to details. There has also been some governmental influence upon public opinion through the press; yet such influence, for the most part, has come through press associations and news agencies, not through direct interference. The press of Japan, discounting all its faults, has been a remarkably free and influential factor in public affairs.

The reception given any stranger, official or unofficial, visiting Japan has also revealed much about the attitude of the Japanese. Tokyo has welcomed generously and enthusiastically innumerable conventions and commissions from every nation. There has seemed to be on the part of the people of all classes of society a sincere interest in the visitor. On the part of the less experienced it may have been curiosity concerning the stranger, but among the better educated there seemed to be an appreciation of the value of having guests who would get acquainted with them, their country, and their ways. They even spoke of it as international acquaintance. They have appreciated the value to them of knowledge of other countries and the ways of other peoples, and welcomed those who came, in the hope that they would disseminate knowledge about Japan. They have felt keenly how little is really known about them by other peoples. To Americans courtesy and hospitality have been accompanied by sincere evidences of friendliness. There have been frequent expressions of desire for mutual acquaintance and a lively in-

terest in things American. Yet there has always been some expression of resentment over the discourteous discrimination of the Exclusion Act. Considering the bitterness of resentment that was felt throughout the nation at the time of the insult, a feeling sufficiently strong to threaten warlike methods in defense of national honor, it has been rather surprising and very commendable that the Japanese should have confined to quiet expressions of resentment the emotions of self-respect that were burning fires within them. The West needs to understand that the day is past when the non-white races will tolerate being treated on any basis that does not recognize equality.

To the leading intellectuals of Japan, and again, to Dr. Nitobé in particular, Japanese and Americans owe much. With a generosity that concealed his own bitterness, Dr. Nitobé made speeches hither and yon explaining that it was a situation of local politics in California which resulted in the ruthless Article 13c of the Immigration Act of 1924, called the Exclusion Act, as a means of winning the labor vote of that state. He and others knowing America and Americans convinced the Japanese that such crass legislation did not represent all America and that other American policies and practices were worthy their admiration. If Americans had made as generous and vigorous efforts for the appreciation of local Japanese politics—if they had tried to evaluate Japanese policies fairly in relation to the whole of Japanese experience—then it never would have been possible for the sensational type of American journal to stir a credulous public to apprehension of Japan. To American newspaper readers Japan has until recently been little known except as a group of islands, not far from the Philippines, which have an ambitious, vigorous government and an efficient navy. If there had been more knowledge of real conditions, of political principles, and of party politics, or some comprehension of economic problems and programs in that rapidly changing nation, it would have been less possible for these propagandist dailies to make any impression with their translations of Japanese newspaper articles or pamphlets which had no influence or were discredited in Japan itself.<sup>6</sup>

6. Recently the great metropolitan dailies of the eastern part of the United

In Japan, furthermore, numerous organizations give evidence of active interest in things international. The Japan America Society, and similar associations of Japanese and Germans, Japanese and English, Japanese and French, reflect the influence of the foreign student, and the discussions at their social gatherings often contribute to continued understanding. More definite in their purpose are the Pan-Pacific Club and the Pan-Pacific Junior Club, which naturally specialize on definite acquaintance with economic and political conditions and relationships within nations bordering upon the Pacific. Within the churches there is the Fellowship of Reconciliation, which has existed since 1916, and which since 1926 has been affiliated with the International Fellowship of Reconciliation. The Japanese branch is called "Yuwakai."

Another international organization with a branch in Japan, one which assumes real significance there, is the League of Nations Association, which is second only to that of Great Britain in its size and the power of its influence. Its activities are similar to those in other countries. It has fifteen branches in important cities where study groups and lectures spread information concerning the activities of the League of Nations. There are forty-nine student branches in universities, colleges, and higher schools throughout Japan, whose study and researches are frequently published in their own magazines. The regular publications of the Association are three monthly journals: two in Japanese, the *Kokusai Chishiki* ("International Understanding"), and a periodical for the young, *Sekai-to-Warera* ("The World and Ourselves"); and one in English, *International Gleanings from Japan*. These are supplemented by the annual publication of books and pamphlets for specialized information and study. Out of 11,258 members there are 6,170 student members. The officers of the Association are a brilliant array of princes, counts, barons, and men from the distinguished group

States, in particular, have had expert news gatherers in Asia as well as in Europe. There has been a consequent widened interest and intelligence concerning politics and policies of the Far East. This is but symptomatic of the growing recognition of the need for international understanding, which in the end is the basis for international coöperation. Hugh Byas, formerly editor of the *Japan Advertiser*, is now special correspondent for the *New York Times*.

of leaders already mentioned at the beginning of this chapter. For foreigners a special division has been organized called the International Section; and early in 1931 a Women's Section was inaugurated.

This Women's Section of the League of Nations Association and the other women's organizations with sympathetic interests are new and potential factors in Japanese life. There is everywhere an insistence that Japanese women, in general, hold strong sentiments against militarism. Groups aligning themselves with the peace movement are not only an innovation in Japanese society, they seem to be of prophetic significance for the influence of Japanese women when, for them, suffrage shall have become a reality. Of course, none of these organizations is as yet pursuing any vigorous program, but by gentle methods, characteristic of Japanese women, they are working gradually and steadily, through social and educational means, to create a body of opinion that shall have influence.

An important women's organization for peace and coöperation is the Peace Association. Its program is as interesting as it is ambitious. It holds meetings once a week, gives public lectures, publishes bulletins, and has recently become associated with the International League for Peace and Freedom. Members of this Association, who are women of rank and social position, open their homes and entertain guests in Japan; they extend hospitality even to tourists by giving demonstrations of the tea ceremony and flower arrangement, in order to help them understand something of the flavor of Japanese life. Public demonstration, especially of the tea ceremony, is indeed an innovation. Formerly, the presence of a stranger was almost a sacrilege. Today, traditional values are being superseded by purposes of international comity. They subscribe to the *News Bulletin* and pamphlets of the National Council for the Prevention of War, edited in Washington by Frederick J. Libby; these they distribute in schools whenever possible. They have five women lecturers in readiness to go to schools when invited. As yet they have not been so bold as to make any protest against conscription, but they have made successful protest to

the Publications Department of the Ministry of Education against the military tone and bloody pictures in the Books of Morals for the elementary grades of the government schools.

These and other changes which have been made in the text-books, were reported by the Tokyo office of the League of Nations Secretariat to the Subcommittee of the Experts on Education of Youth. Excerpts from the report are illuminating:

Attendance at the elementary school is compulsory in Japan, and all text-books, called "National Text-books," used in the elementary schools are uniform and compiled by the authority of the Ministry of Education. Recently, their contents have been considerably revised with a view to promoting a spirit of international peace and co-operation. . . .

A number of text-books on morality, both for the use of children and their teachers, all contain chapters relating to the League, such as "The World War and Japan," "International Friendship," "International Relations," etc. A chapter on international friendship, after urging the necessity of good-will and friendship between countries, briefly relates that at the Peace Conference held in Paris, in which Japan participated, a peace treaty was concluded, and that the League Covenant, which is essential to the future peace of the world, forms a part of that treaty. This chapter also refers to the Imperial Rescript issued on January 10, 1920, when the peace treaty came into force, commanding the nation to endeavor to promote universal peace by observing its obligations and promoting international justice.

A chapter on international relations explains the aims of the League as follows:

" . . . At present more than fifty countries, including almost all the nations of the world, are members of the League. It is a League of States formed in accordance with stipulations of the Covenant and its aims are twofold: To prevent war and to achieve international peace and security, and to promote international co-operation and to contribute to the welfare of mankind. In order to attain these aims, the Member States have undertaken to reduce their armaments, to respect all treaty obligations and to settle international disputes by peaceful means. . . ."

This chapter also deals with the mandate system, communications and transit, health, labor, protection of children, intellectual co-operation, and the organization of the Assembly, Council and Secretariat.

. . . The Ministry of Education issued instructions in 1925 ordering the inclusion in the secondary school text-books on morality, history, geography, and civic education of the following subjects: International Relations, the International Spirit, the League of Nations, the

International Labor Conference, International Co-operation and Morality, etc. . . .<sup>7</sup>

The report also states that one of the three textbooks for teaching English in the secondary schools "reprints the speech of President Wilson delivered in 1916, in which he explains his ideas of a League of Nations."

Ministers of Education of both parties, Dr. R. Mizuno of the Tanaka government and Dr. I. Kobashi of the Minseito Cabinet, lent their aid, through articles in the League of Nations Association publications, to the movement for amended textbooks. This was in part a response to the suggestion from the International Committee on Intellectual Coöperation which was presented to the Department of Education through Dr. Aikitsu Tanakadate, Japanese member of that committee. The prompt changes in the texts which followed his return from Geneva in 1927 but illustrate the close coöperation existing between the League of Nations Association, the League of Nations, and Japan. This is partly due to the fact that Japan, committed to the League, gives financial aid to the League of Nations Association.

The Japanese attitude toward the League itself has been one of loyalty because the Government, through its membership, is committed to it. But there has been more than lip service, or a loyalty which is mere duty; there have been interesting evidences of new and active confidence in the League. At the beginning of the last decade the League was new, it was remote from Japan and was concerned with European affairs. Japan, as a world Power, participated and learned much; she was not always content with what went on, but was content to try the experiment. Until 1927 it might be said that the Japanese had a rather vague attitude toward the League. But since the return of Dr. Nitobé from Geneva there has been increasing confidence in the League, due in large part to his campaign of education. Moreover, membership in it has recently come to be recognized as a business asset. The Economic Conference made it quite clear that the League of Nations is interested in busi-

7. The report quoted can be found in the *Educational Survey* published by the Secretariat of the League of Nations, July, 1930, pp. 85-86.

ness, as much as in politics, and is working for economic co-operation. Belief in possible profit to Japan was much strengthened after translation into Japanese of the report of the League's Finance Committee which discusses gold production and gold distribution. In this and similar investigations Japanese financiers hoped for suggestions which might help them cope with the problem of their sinking gold reserve. In 1931 the Japanese Federation of Chambers of Commerce passed a resolution to request the League to consider an inquiry into the related problem of silver. This appeal was sent to the League through the Foreign Office in Tokyo.

Another evidence of coöperation with the League by business men can be found in the existence of seven or eight branches of the Association for Liberty of Trade. These were organized after the Economic Conference, and are federated with associations elsewhere. Already, the movement has considerable influence: the Diet proposed to raise duties, the associations protested, the Government withdrew its proposal. This incident introduces a new situation: instead of the Government taking the lead, the opinion of the business world is attaining influence if not leadership, and that influence is in the direction of coöperative, non-militaristic policies.

We may parallel the growing democratic influence illustrated by this demonstration of the Association for Liberty of Trade with the popular interest that had been awakened for a program which might guarantee peaceful negotiations between nations, instead of military methods, for the settlement of international controversies. Proposals to that end were launched at the Honolulu meeting of the Institute of Pacific Relations in 1927. When delegates returned from the Conference, a small committee of professors at the Imperial University started the discussion; newspapers and magazines became interested and gave their support. Finally, when the Paris Pact was presented, public opinion was ready and popular discussion favored what would usually have been only a matter for recommendations from the Privy Council. The Japanese people seem quite ready, when proper preliminary education is given, to understand the spirit of coöperation, and to respond to such a policy.

In this connection one wonders what may be the influence of the recently organized Gunshuku Kokumin Doomei. This National Federation for Disarmament was founded in Tokyo under the leadership of Mr. Kagawa, a social and religious leader, Mr. Osaki, formerly mayor of Tokyo and member of the House of Peers, and Mr. Kiyose, a member of the House of Representatives, together with various professors, lawyers, and business men. In Osaka it is composed of business men and newspaper men. Just preliminary to the Disarmament Conference of 1932 in Geneva and just following the acceptance of the London Naval Treaty, the organization of Gunshuku Kokumin Doomei was clearly the launching of a disarmament movement, and was cited in the spring of 1931 as evidence that confidence in military power was losing ground in the Government and among the people. But the events of September, 1931, outweighed all such movements. What permanent influence the military events in Manchuria will have upon public opinion remains to be seen; the outcome hangs in the balance.

Those who wish to strengthen belief that the military power was losing ground in the Government and among the people report that many meetings have been held throughout Japan in recent years for study and discussion of conditions in China and Manchuria, and of Japan's relation to them. Formerly, such meetings would have recommended the immediate use of military force as the solution of all problems and all relationships, especially for the security of Japanese prestige. Throughout 1930 and in the earlier part of 1931, they theoretically favored a strong attitude toward both China and Russia, but no one insisted upon the use of military force. Few advocated it even in Manchuria. Moreover, the editor of the *Gaiko Jibo* ("Revue Diplomatique") threw his influence toward a forward-looking policy that was not built on militarism. This fact is interesting because the *Revue* could not exist in opposition to the Foreign Office.<sup>8</sup> It is, therefore, easy to draw the inference concerning

8. It is, consequently, quite important to note the explanatory attitude taken by this journal after September 18, 1931. The *Living Age*, for December, 1931, pp. 294-296, quotes at length. For our purposes it is sufficient to note the following: "In the present writer's opinion, the Japanese authorities have been wrong in letting so many issues remain unsolved. If the government is con-

the Foreign Office of the Minseito party under Mr. Wakatsuki, as an asset for Japanese leadership in methods of conciliation. The forces described up to this point are cumulative; they are the background in which the diplomacy of Baron Shidehara, who directed Japanese foreign policy from 1924 until December 11, 1931, except for the two-year interim under General Tanaka, was able to function. Baron Kijuro Shidehara has been a real asset to Japan for leadership in programs for international understanding and coöperation.

Baron Shidehara, who wrote his state papers in English and translated them into Japanese, was in reality an excellent and extraordinary liaison officer between Japan and the West. His mental processes are so nearly occidental that he has been able to negotiate for Japan with western nations in such a manner as to win confidence in Japan's policies and motives; the better understanding between the United States and Japan which has recently been developing has come about during his administration of the Foreign Office. If his occidentalized thinking has been less well understood by all groups in Japan, he has, nevertheless, made a consistent endeavor to interpret, to the Japanese, his program of conciliation in foreign affairs. To this policy he has believed Japan is committed by her League membership and by the Paris Pact, but mostly because conciliation is the course of wisdom for the surest attainment of stable, amiable relationships among peoples, which after all is the surest guaranty of the vital interests of all and each. Definite application of Baron Shidehara's policy will be mentioned from time to time in the succeeding chapters.

vinced of the righteousness of its demands, it should have settled the various issues long ago." When the insistence, however, concerns demands that should have been made of the Chinese, there is no mention of military force as the tool.

### CHAPTER III

## IMPORTANCE AND INFLUENCE OF MANCHURIA IN DETERMINING JAPANESE INTER- NATIONAL POLICY

IF we recall Japanese experience with military implementation of her foreign policy during the last half century, we will find that it can be divided into three stages: the first, including the Sino-Japanese Wars, the Japanese designate as the period of struggle for national political independence; the second, the period of ambitious continental policy, from 1899 to 1920, logically followed, and was in conformity with imperialistic practices then in vogue among the nations; the third state, that of armament according to ratios determined by international treaties, dates from the Washington Conference. Throughout all three stages the center of interest has been Manchuria. In the beginning it was an area which, if occupied by an aggressive power, might endanger Japan's very existence. After the Treaty of Portsmouth (1905), which closed the Russo-Japanese War, Russian rights and privileges south of the present Chinese Eastern Railway were transferred to Japan with the approval of the Chinese Government.<sup>1</sup> Since these victories, military and diplomatic, incident to the Russo-Japanese War, the Japanese have considered Manchuria a sphere of interest and a frontier; as such it is held to be vital to them, both for their economic development and for their prestige.

Japanese ambition for special privileges within neighboring Chinese territory reached its zenith in the Twenty-One Demands of 1915. These Demands made upon a weak govern-

1. For a more detailed statement of the content of the treaties and agreements, see below, pp. 211 ff. For the text of the Treaty of Portsmouth and the Sino-Japanese treaties supplementing it, see John V. A. MacMurray, *Treaties and Agreements Concerning China, 1894-1919*, I, 522-526, 549-553. There are many Russo-Chinese treaties granting and defining Russian privileges in Manchuria, *ibid.*, pp. 74, 79, 81, 119, 121, 127, 154, 157, 274, 277, 321, 326, 329, 330, 629, 661.

ment in China, after the seizure of the German concession of Shantung, were followed by Sino-Japanese agreements and treaties which were assumed to remove the unilateral character of the Demands. The treaties signed by President Yüan Shih-k'ai, who was virtually dictator in Peking, were enforced by a Japanese ultimatum presented to China, May 7, 1915;<sup>2</sup> they replaced the Demands but retained, for the most part, their important provisions. The special privileges thus secured within Manchuria and Mongolia amounted to guaranteeing to Japan an advantageous position; they created a sphere of influence especially in South Manchuria, or in that part of the Three Eastern Provinces lying south of the Chinese Eastern Railway, and more especially the region covered by the South Manchuria Railway.

Article I of the second group of Demands extended to Japan the lease of Port Arthur and Dairen for ninety-nine years; the same term of years applied to the South Manchuria Railway and to the Antung-Mukden Railway; Article II permitted Japanese subjects to "have the right to lease or own land required for erecting suitable buildings for trade and manufacture or farming"; Article III gave Japanese subjects freedom "to reside and travel in South Manchuria and Eastern Inner Mongolia and to engage in business and manufacture of any kind whatsoever."<sup>3</sup> The Chinese, however, inserted an article intended to guarantee "the police laws and ordinances and taxation of China" outside the Japanese railway zones. But they made a further commitment in a supplementary note: namely, that "hereafter, if any foreign advisers or instructors on political, financial, military or police matters are to be employed in South Manchuria, Japanese may be employed first."<sup>4</sup> The last of these notes made the declaration that "China will hereafter provide funds for building necessary railways in Manchuria and Eastern Inner Mongolia; if foreign capital is required Chinese may negotiate with Japanese capitalists first." This kind of aggres-

2. This is the basis for the present Chinese claim that these treaties are "treaties under duress." For further details, see below, p. 213.

3. MacMurray, *op. cit.*, II, 1231-1236.

4. Shu-hsi Hsu, "The Manchurian Question," in *Problems of the Pacific* (1929), pp. 489-590.

sion, through guaranties of special privilege, was an excellent imitation of the economic imperialism that had been practiced by European nations in Asia for three decades before the World War. The Japanese, because of their military strength, could police the new area from which Japan's industry might draw raw material, and in which her capital might have assured opportunity for investment well guarded from foreign competition.<sup>5</sup>

Such ambitions as were realized in this coveted sphere of influence were strengthened from time to time, both before and after 1915, by various agreements with England, France, and the United States—even with Russia. A treaty having for one of its objectives "the maintenance of the territorial rights of the High Contracting Parties [England and Japan] in the regions of Eastern Asia and India, and the defense of their special interests in the said regions," was made August 12, 1905, that is, three weeks before the Treaty of Portsmouth (September 5, 1905). This affirmation of the Anglo-Japanese Alliance, two years before the date of expiration, omitted the first phrase of Article I of the Treaty of 1902, "The High Contracting Parties having mutually recognized the independence of Korea"; in its stead Article III states that "Japan possessing paramount political, military, and economic interests in Korea, Great Britain recognizes the right of Japan to take such measures of guidance, control, and protection in Korea as she may deem proper and necessary to safeguard and advance those interests. . . ."<sup>6</sup> This made the annexation of Korea a possibility. An agreement was made with France in 1907 (June 10) in regard to "the regions of the Chinese Empire adjacent to the territories where they (France and Japan) have rights of sovereignty, protection or occupation"; they engaged "to support each other for assuring the peace and security of those regions, with a view to maintaining the respective situation and the territorial rights of the two Contracting Parties in the Continent of Asia."<sup>7</sup> During the

5. Details concerning this police power are admirably discussed by T. A. Bisson, "Basic Treaty Issues in Manchuria between China and Japan," *Foreign Policy Reports*, VII, No. 21 (December 23, 1931), pp. 392-393.

6. MacMurray, *op. cit.*, I, 324-325, 516-518.

7. *Ibid.*, p. 640.

World War, in July, 1916, when Japan's position in the Far East was profiting by the preoccupation of the Powers and the weakness of China, Japan and Russia agreed not to be party to agreements or political combinations against each other; if either party's territorial rights or special rights or interests in the Far East were jeopardized, they would negotiate between themselves to protect and safeguard said rights and interests.<sup>8</sup> And the Lansing-Ishii Agreement, which states that "the Governments of the United States and Japan recognize that territorial propinquity creates special relations between countries, and consequently, the Government of the United States recognizes that Japan has special interests in China, particularly in the part to which her possessions are contiguous," seemed to the Japanese to complete their security.<sup>9</sup>

Unfortunately for Japanese plans, the Chinese began, even before the Washington Conference, to blockade the purchase or lease of land anywhere in Manchuria for any purpose whatsoever. Secret orders were issued to Provincial officers forbidding them to sell or lease land to foreigners. In a few instances land has been sold to the South Manchuria Railway; and individual Koreans or Japanese have purchased land from individual Chinese, but, in practice, there has been no general purchase or lease of land by the Japanese in Manchuria or Mongolia. Nevertheless, in Japanese theory, the treaty rights or the amended Demands of 1915 stand; in their view, the Chinese have no right to take any action which will be in effect a nullification of those provisions.

From time to time since 1915 thinking Japanese may have acknowledged that the means employed for acquiring treaty rights in Manchuria were "in some respects regrettable." In the same breath, however, they will state that the acquired treaty rights are "absolutely necessary in order to maintain Japan's position in Manchuria."<sup>10</sup> Here is an interesting conflict, the method open to criticism, but part of the spoil, Manchuria, in-

8. Masamichi Royama, "The Japanese Position in Manchuria," in *Problems of the Pacific* (1929), pp. 535-536.

9. MacMurray, *op. cit.*, II, 1394-1395.

10. R. L. Buell, *The Washington Conference*, p. 333.

dispensable to Japan. (Shantung, included in the original Demands, had been relinquished after the Washington Conference.) It is a compromise position; whether it will in turn become a transitional position is a question to be answered. Historically speaking, the Washington Conference initiated a new way in 1921: individual or separate agreements were swept away or modified by multilateral agreement. Nineteenth-century diplomacy and practice were assumed to belong to the past: "So far as Great Britain was concerned, spheres of interest are things of the past," was the declaration of Mr. Balfour.<sup>11</sup>

Finally, "a treaty between the United States of America, Belgium, the British Empire, China, France, Italy, Japan, the Netherlands, and Portugal relating to Principles and Policies concerning China," which is usually spoken of as the Nine-Power Treaty, was agreed to by the countries interested in China, and by China herself in some particulars. This treaty is held to have initiated a new policy: according to Article IV, "The Contracting Powers agree not to support any agreements by their respective nationals with each other designated to create Spheres of Influence or to provide for the enjoyment of mutually exclusive opportunities in designated parts of Chinese territory."<sup>12</sup> The carrying out of the policy by Japan became the responsibility of Foreign Minister Baron Shidehara, who was Ambassador Extraordinary and Plenipotentiary at Washington in 1921. He and those representing the contracting Powers other than China agreed:

(1) To respect the sovereignty, the independence, and the territorial and administrative integrity of China;

(2) To provide the fullest and most unembarrassed opportunity to China to develop and maintain for herself an effective and stable government;

(3) To use their influence for the purpose of effectually establishing and maintaining the principle of equal opportunity for the commerce and industry of all the nations throughout the territory of China;

(4) To refrain from taking advantage of conditions in China in order to seek special rights or privileges which would abridge the rights

11. *Conference on Limitation of Armament, Washington, 1922, Proceedings*, p. 1108.

12. *Ibid.*, pp. 1621-1629.

of subjects or citizens of friendly states, and from countenancing action inimical to the security of such states.

It is interesting to note, however, that this Nine-Power Treaty was preceded by a Four-Power Treaty between the United States of America, Great Britain, France, and Japan. This superseded the Anglo-Japanese Alliance of 1902. The Four-Power Treaty left Japan isolated and secure in Asia; she could afford to be magnanimous, she could withdraw from Shantung, and become party to the Nine-Power Treaty with no sacrifice of her vital interests. With the 5-5-3 ratio and the non-fortification agreement it became impossible for any non-Asiatic Power, if acting alone, successfully to intervene in the Orient by force. The Four-Power Treaty made it impossible for any two of the Powers—for instance, Great Britain and the United States—to intervene jointly, thus ignoring the other signatories. It also limited the possibility of any two of the four Powers bringing diplomatic pressure upon Japan. As long as the treaties of the Washington Conference are adhered to, Japan is supreme in the western Pacific and over Asia. The Naval Treaty made it physically impossible for the United States successfully to attack Japan or Japan to attack the United States.<sup>13</sup>

From the vantage point of 1931 it was indeed possible to say that national policies which were based upon secret bilateral treaties, characteristic of the diplomacy of the nineteenth century, were replaced or modified by multilateral agreements of the Washington Conference. The new practice, and the status publicly defined through the publication of the treaties, initiated a new epoch in the history of Pacific relations.<sup>14</sup> Agreements at the Washington Conference resulted in the withdrawal of the Japanese from Shantung and from the full extent of the jurisdiction Japan had claimed over Mongolia and Manchuria. She retained the lease of Kwantung, including Port Arthur and Dairen, and the rights and privileges incident to the continued management of the South Manchuria Railway. The modification of the Japanese position in Asia, followed in

13. Buell, *op. cit.*, p. 200.

14. Cf. Masamichi Royama, *op. cit.*, pp. 534-537.

1922 by the death of the Genro Prince Marshal Yamagata (who had created the Japanese army) and the consequent withdrawal of his militaristic influence, made possible the beginning of a new foreign policy in Japan's history. Perhaps for the Pacific area something as momentous was achieved at Washington in 1922 as for Europe and the World when the League of Nations was established in Geneva in 1920; multilateral international treaties replaced unilateral arrangements, bilateral agreements, and secret compacts. The Anti-War Pact has now been added.

During the years 1924-27, Baron Shidehara, as Foreign Minister, initiated the new foreign policy: he forbade aggressive measures, and the result was advantageous to Japanese trade in China. In 1927, for instance, the Japanese were not a party to the Nanking bombardment; the Japanese attitude was appreciated by the Chinese; and Japanese trade prospered.

Nevertheless, in spite of the fact that Japanese interests in China were intact at the end of 1927, coincident with this moderate policy, there was great economic discouragement. Economic difficulties at home, due to post-war depression and bank failures, together with the tremendous losses from the earthquake disaster, came to a head in the panic of March, 1927. General Baron Tanaka's Seiyukai party came into power pledged to a positive policy at home and abroad. Here was the opportunity for the militarists to get their innings, and to pursue an aggressive intervention in China which should satisfy the imperialists, who were defeated by the Washington Conference in 1921.

Such a swing from one policy to the opposite is the inevitable result of the play of party politics; such tactics but illustrate the swinging-pendulum character of parliamentary governments. The developing parliamentary democracy of Japan is true to its prototype, the British. In the third quarter of the nineteenth century England had both Disraeli endeavoring to make her respected and feared by other nations, and Gladstone standing for peace, retrenchment, and reform. The intervention of England in the Balkan Peninsula was censored by the Gladstone Liberals who feared business would be interrupted by war and

who were cautious about military expenditure. The spirited foreign policy which grasped the Suez Canal shares and made Queen Victoria Empress of India was definitely opposed by the "Little Englanders," who inaugurated savings banks, state insurance, and civil service reform. Such diverse policies are the inevitable in a democracy.

In Japan the developing two-party system behaved similarly. The peaceful policy of Baron Shidehara was followed by a reactionary policy under General Baron Tanaka, who was the *protégé* of Marshal Prince Yamagata. The Seiyukai party inaugurated once more a policy of aggressive action in China: control of Shantung to the extent of garrisoning the Tsingtao railway and occupying the city of Tsinan was undertaken; active protection of Japanese life and property in Shantung was tried; Chiang Kai-shek and the Nationalists were thwarted in their campaigns in Shantung and along the railway in 1928 as well as in 1927. Meanwhile (in 1928), before the Tanaka *régime* had ended, when Peking was about to fall into the hands of the Nationalists, the Tanaka government notified the Chinese generals that should either the Northern or Southern army come into Manchuria it might be necessary for the Japanese "to take appropriate and effective steps" for the maintenance of law and order; that "the special position of the Imperial Government in Manchuria and Mongolia" would compel such action. All this, especially the inclusion of Mongolia, would suggest a possible revival of the position taken in the Twenty-One Demands as the basis for General Tanaka's threatened defense of "the special position of the Imperial Government." The pendulum had swung all the way back to 1915.

Moreover, it was in this year of threatened intervention that Chang Tso-lin's train was blown up on the way to Mukden. This incident, occurring, as it did, under the bridge where the South Manchuria Railway crossed the Chinese line, has been the subject of accusations and recriminations between the Chinese and Japanese.

Because of these happenings, especially the prolonged occupation of Tsinan, negotiations for the revision of the Sino-Japanese treaties, not in relation to Manchuria in particular,

but in relation to Chinese tariffs, inland navigation, and extra-territoriality, in general, were delayed. The Japanese were in disfavor in China; Japanese trade with China suffered. The whole experiment of a "positive policy in China," a recrudescence of the older imperialism, was quite thoroughly discrediting itself. Moreover, Nanking protested to the Powers at Geneva against the violation of Chinese sovereign rights. When the protests were of no avail, because Nanking was not yet recognized as the government of China, an anti-Japanese boycott was tried. This made an impression. Reaction against Tanaka set in; Japanese public opinion showed its liberal tendencies; Japanese merchants joined the upholders of the Shidehara conciliatory policy toward China. And Baron Shidehara criticized effectively the Shantung intervention, which professed protection of Japanese life and property, but which, in reality, destroyed more than it protected, and this at the cost of sixty or seventy million yen to a country already financially overburdened. ✓

After July, 1929, however, with the return to power of Baron Shidehara as Foreign Minister, there was great progress in the practice of policies of conciliation and coöperation in all matters concerning China and Manchuria. The appointment (June, 1931) of Count Uchida to the presidency of the South Manchuria Railway was interpreted as evidence that the present government intended to clear up its relations with China regarding Manchuria. Foreign Minister from October, 1918, to September, 1923, and representative with plenipotentiary powers at Paris when the Peace Pact was signed, Count Uchida brought influence and diplomatic experience to his position; his views were said to coincide with those of Baron Shidehara, which looked to the restoration of friendly relations with China. The fact that he was an experienced diplomat was interpreted to mean that definitive adjustments of points of controversy would be attempted through diplomatic channels. A Sino-Japanese joint commission was also appointed (1931) for investigating railway construction in Manchuria. The sitting of this commission, however, was delayed because of the illness of Chang Hsueh-liang, the Young Marshal, who has been Chinese

Provincial Governor of Fengtien<sup>15</sup> and Military Dictator of Manchuria since the death of his father, Chang Tso-lin, in 1928.

Economy in national expenditure, and increasing trade and commerce are very essential to Japan. Since both—savings and trade benefits—were objects of Baron Shidehara's policy, his program seemed to be suited to Japanese needs.

Foreign Minister Shidehara, however, during his administration, aimed at more than the promoting of prosperity. A study of his speeches reveals the fact that he worked consistently toward the carrying out of a constructive program; he did an unusually effective job in the formulation of public opinion in the West concerning foreign relations of Japan, as well as guiding those relationships, especially in Asia. While charting a policy of conciliation, coöperation, and friendly relations, he defined the fundamental principles for action in almost axiomatic declarations. He was thus able to launch a creative program in league with the newest trends in international polity; and should, for that reason, be ranked high among the foreign ministers of this century.

Nevertheless, in spite of the curtailment of the old imperialism after the Washington Conference, throughout the administration of Baron Shidehara there continued to be much discussion over Manchuria and treaty rights there. Furthermore, deliberate competition on the part of the Chinese, as expressed by the building of parallel railway lines and the development of the rival port of Hulutao, was disturbing to the Japanese monopoly of transportation *via* the South Manchuria Railway and the port of Dairen.<sup>16</sup> The balance sheet of the South Manchuria Railway for 1931 showed a net profit of only ¥21,-673,461.95 as compared with ¥45,505,857.04 for the year 1930. Manchuria, the tinder box of the East, long the crux of Japanese policies, became the paramount issue. For that reason

15. Fengtien is the southern part of the Three Eastern Provinces spoken of as Manchuria; its capital is Mukden. Manchuria is not Chinese nomenclature. The Chinese name is Tung San-seng. The new Chinese name for Fengtien Province is Liaoning. See E. C. Ning, *Historical Account of the Liaoning Province*, printed by the Northeastern University Factory, Mukden.

16. More cases of friction will be discussed in chapter vi, which is an attempt to evaluate the crisis of September 18, 1931.

we may well summarize the attitude of the Japanese toward it by presenting certain current opinions frequently expressed before September, 1931.

First, we may not forget, in fact we must remind ourselves again and again, that the Japanese fought two wars, the Sino-Japanese and the Russo-Japanese, in order to protect their frontier from conditions which they believed threatened their very existence. The wars by creating the buffer area of Chosen secured Japan herself from peril from either the Chinese or the Russians. And since military success against the Russians brought such distinction to the nation that thereafter she took her place among the Powers, the position of the Japanese in Manchuria became something more than temporary privilege in a buffer area, even though that area may have possibilities of economic development. It seems, in fact, to be the platform upon which Japan has built her national prestige among rival nations. With Manchuria an area of opportunity according to present treaties, Japan is a great Power. Shrines, therefore, have been erected in Port Arthur to the men who saved Japan and made her a great nation. Patriotic loyalty and profound religious devotion to the heroes there enshrined will, consequently, not tolerate any policy that might be interpreted as disloyal to the noble dead, their ancestors.

To this emotional phase of the Manchurian question we must add the economic. Japan has nearly seventy million people in an area roughly the size of the state of California; but the arable land of Japan is but 16 per cent of that limited territory. Population is increasing at the rate of from seven to nine hundred thousand annually. There is one-quarter of an acre of land per unit of population; the average farm is estimated to be two and one-half acres, and it is said that 65 per cent of the produce of that land must go to rent and taxes; the average farmer has a deficit; 46 per cent of the land is farmed by those who own no land, and 29 per cent of the farmers must supplement their incomes by non-agricultural pursuits.<sup>17</sup> Employment may be found in factories, but Japan has little raw material and little

17. Dr. S. Nasu, *Land Utilization in Japan*, as quoted by Sherwood Eddy, *The Challenge of the East*, p. 115.

mineral wealth within her borders, so that industrial opportunity is limited. Moreover, the poverty of factory workers and the consequent discontent are serious.<sup>18</sup> Japan cannot find areas for expansion in South America and elsewhere for reasons of inadaptability or prior privilege. Manchuria is rich in resources, and might be a region for economic development and expansion as well as a source of raw material; but its austere climate makes it unattractive for settlement by the Japanese themselves, because they cling to styles of architecture and clothing suitable only for milder regions. The Japanese have, however, invested much in the railway, and in the development of Keijo, Mukden, Dairen, and Port Arthur; they have likewise invested money in developing resources. But according to trade reports (1929) the total import-export trade with Manchuria, including Kwantung Province, is less than 10 per cent (it is nearer 7 per cent) of the total Japanese foreign trade. The trade with China, excluding Manchuria, is 12.9 per cent; while 42.5 per cent of export and 29.5 per cent of import trade are with the United States.

From those figures one might argue that Manchuria's economic importance to the Japanese has been exaggerated. However that may be, the Japanese have made Manchuria an issue. The strategic reason, the need for a buffer area, is evident; the emotional is understandable. At times one might be tempted to say that Japanese pride in their own prestige in Manchuria, which if retained ranks Japan as a great Power, has caused them to make a fetish of special privilege in this area. There is, however, a factor which makes impossible an unqualified adherence to this opinion. That factor is the intelligent way in which the Japanese have been analyzing and attacking their population problem. No longer are they dominated by the traditional militaristic theories that territorial expansion is necessary because of overpopulation. That kind of politics for power is being replaced by a facing of the problem of supporting their population. They are planning for increased food production through improved methods of agriculture; bean cake which comes from

18. Sherwood Eddy gives a brief, striking picture of these hardships in *The Challenge of the East*, pp. 117-120, 125-127.

Manchuria is a valuable fertilizer. They are finding employment for the surplus population by industrializing their occupations and by developing new ones; to this end raw materials such as iron and coal, cotton and wool, which the island kingdom does not possess, are fundamental necessities. Manchuria seems to have abundance of all these raw materials, probably including oil; it has latent resources as yet unmeasured. Therefore, if in the future the Japanese can draw upon the raw materials of Manchuria, they may be able to develop agriculture and industries which will furnish a livelihood for their multitudes. If Manchuria, as a resource in this respect, has acquired undue importance to them, it is because they are not yet convinced that they can disregard it for the future, nor neglect to protect the investment already involved, even if the trade sheet is not very convincing.

It has been for reasons such as these that the Japanese have felt entirely justified in protecting property and investment by the exercise of military police power during the recent years of disorganization in China when it has been no longer safe to go big-game hunting in certain northeastern regions because of the bandits. During times of civil strife between the Chinese, Japan has maintained order in her railway zone and in the territory to the east of it. She has prevented the instability of government regulation in this part of China from involving Japan in extraordinary hardship because of loss on investments in Manchuria, or because of the complete loss of the resources which the commerce in this area affords to Japan. The exercise of such administrative powers as Japan has deemed necessary has been represented by the Chinese as exceeding treaty provisions. To the world's greatest pragmatists the Japanese have replied that the circumstances necessitated the measures; they have, therefore, claimed justification for intervention because such action was demanded by the exigencies of the situation.

The Japanese have long been convinced that, until China has a very stable government and can police this area adequately, it is necessary for them to maintain peace and security for the protection of their investments, their citizens, and their trade. If they should relinquish their hold, chaotic conditions, which

would prevail to the borders of Chosen, would, they claim, be especially dangerous when Russia is on their frontier. For Russia, with its strong central government, is possessed of unknown power, and has appeared to have a hostile program. Japanese stability in Manchuria, they have also argued, is valuable to the Chinese as well as the Japanese: it maintains order in which agriculture and industry may prosper, and preserves the region from possible Russian invasion. The Japanese have held it to be "a temporary expedient," yet have maintained that they, the Japanese, should be the sole judge of when they should withdraw.

This position the Japanese, without exception, have been convinced is vital to them; and in relation to it they have seen no reason to be conciliatory. Their very general and apparently sincere interest in international coöperation and the newer techniques, which are now being advocated for the adjustment of international differences, ceases to function in the case of Manchuria. Moreover, it has appeared to the Japanese in general that conciliation is quite impossible with nations such as China and Russia; China, under recent contemporary conditions, would probably be unable to live up to her agreements, and the policy of the Russians is both unknown and incalculable. Until 1931 the Japanese have argued that it is impossible to be bound by programs and policies of the League of Nations in relation to either China or Russia, not active coöperators with the League. In this connection, therefore, the newly developing co-operation between China and the League has had deep significance.

The Japanese, in general, have seemed to be confident that they could, under existing circumstances, handle the Chinese-Russian frontier problems. There has been one proviso which was quite generally held. They have been watchful lest the United States should become too much a partisan of China, or lest the wealth, resources, and consequent power which Americans could let loose in Manchuria, should they so choose, might subordinate the Japanese in open competition. Since Japan, herself, claims to be maintaining an Open Door policy beyond the special privileges secured to her in the treaties, the Japanese be-

lieve it would threaten Japan's prestige if, in the name of the Open Door, the United States should side with China in her opposition to the stabilizing influence of Japan in Manchuria. Moreover, the opinion is widely held that if the United States should become interested and assume the right to judge the administration of the Open Door policy in Manchuria it would embarrass Japan in administering that policy; that it would materially lessen their economic possibilities in that area; and that the results would be disastrous to Japan.

It may be claimed in all fairness that such fears have been the survival of attitudes of mind created by the militarists in the days before the Washington Conference. They may have been kept alive by antagonisms which have rankled because of the exclusion policy of the United States. Such vague fear of the United States is, however, not peculiar to Japan. Only recently André Siegfried described a similar fear in Europe. He said:

We see American motor cars on the roads, and the machines which build these roads are American. When we go into the country we see agricultural machines and American advertisements plastered over our walls. We see everywhere this furtive influence which threatens and whose significance is much broader than the industrial and financial. We are afraid.<sup>19</sup>

This attitude of fear of the power and success of the United States, whether French or Japanese, is but the obverse side of defensive emotions of pride in their own prestige and jealousy for their own prééminence. These are not peculiar to Japan alone, but since they exist, characteristic expression thereof deserves notice in order that opinion and action emanating from the attitude of fear may be evaluated.

In actual fact the Japanese are desirous that the United States should give them support and backing in Asia; practically they hope that Americans will lend them money with which they can develop the resources of Manchuria. The protesting fears of the Japanese lest the United States interfere in Manchuria is but a characteristic way of expressing what they really want—

19. *New York Times*, June 4, 1931, address to the Nouvelle Ecole de la Paix entitled, "The Foreign Policy of the United States and American Expansion."

support from the United States for their policy and their economic opportunity in eastern Asia.

Meanwhile, recognition of the success of the United States, which led the Japanese to study its policies and practices, has resulted in the appropriation of principles and their application to Japanese problems. Ten years ago, in particular, one heard a great deal about the Japanese Monroe Doctrine. At present it may be less often quoted as such, yet the idea is part of the thinking of many Japanese. This is inevitable if we remember that the men in Japan who are now leaders in business and public affairs were formulating their opinions in the decade that centered in 1915 when the Monroe Doctrine was much discussed. By these men and those whom they influence, by men becoming partners in business, even by boys in high school, one finds the Monroe Doctrine held up as a precedent for Japanese policies. Since by the theory of the Monroe Doctrine when so discussed—a travesty of the original doctrine—the United States would preempt Central and South America, and would assume the right to protect these areas from intervention or invasion by other Powers, it has seemed logical to the Japanese that Japan should have similar rights, a Monroe Doctrine for Asia, or, at least, Manchuria. It is frequently asserted by them that Japan would not have Manchuria protected from Japan any more than the United States would have Mexico protected from the United States. And they add that if the United States can pursue certain policies in South America, Japan should be allowed to do the same in Manchuria. The most recent statement of this character, one meriting attention, was made by Hikoichi Motoyama, dean of Japanese journalists and president of the Tokyo *Nichi Nichi*. Having painted the picture of how Japan, at the expense of billions of yen, had built up Manchuria into a wealthy state, peopled in part by a million Japanese, he explained that the Chinese, seeing Manchuria become a prosperous region, suddenly began claiming their right to control and administer it.

Japan doesn't doubt China's title to the territory, yet she cannot grant that because the Chinese have territorial claim they can therefore do anything with the magnificent economic temple that Japan erected

at such huge cost in accordance with treaty rights. You wonder why Japan declines to have a third party intervene in the settlement problem. The incidents have been a local affair, the result of enforcement of treaty rights. . . . Would Americans gladly accept the interference of a third party, say Japan, in settling a possible dispute with one of her neighboring countries? You have your Monroe Doctrine. Well, suppose Japan says she has her own Monroe Doctrine, what then?<sup>20</sup>

Another contention, which they claim is based upon American practice, is argued as follows: If the United States may be the sole judge of conditions in Central America and determine her actions accordingly, Japan should likewise be the sole judge of conditions in Manchuria. This is obviously a survival of the theories definitely argued in 1921. Japan, they claim, should have the sole right to determine what policy, for her security, she believes it necessary for her to pursue in Manchuria; she must be resentful of any supervision, or assumed right of supervision, of the Open Door policy there, that might imply that Japan is being watched and criticized by the United States or by any other nation.

This latter contention is much more generally held than the former theory of a Japanese Monroe Doctrine. Both were advanced prior to 1921, both might apply to circumstances existing previous to the Washington Conference. Conditions have been definitely modified by the agreements of 1921, but these theories survive among those who are not reconciled to the surrender of aggressive imperialistic policies. Unfortunately, the full meaning of all the agreements signed in Washington has not been so generally disseminated as was the case with the theories they superseded.

The abrogation of the Lansing-Ishii Agreement which followed the signing of the Nine-Power Treaty was deeply regretted in Japan. This Agreement, when it was made in 1917, and as long as it lasted, was interpreted by many to be a recognition that there was a Monroe Doctrine for Asia.<sup>21</sup> The Nine-Power Treaty is interpreted to mean that the United States no longer recognized that Japan had interests in China which were different from those of other nations, all of whom agreed to an

20. *New York Times*, October 27, 1931.

21. See above, p. 161.

Open Door policy, and all of whom renounced former "special interests" in the area of China.

The Japanese have consequently cherished a statement made by William R. Castle, Jr., when *ad interim* ambassador to Japan (December, 1929, to June 30, 1930),<sup>22</sup> that the United States looked to Japan to be a stabilizing force in the East; they regret the furor that this statement created in some sections of the United States, and continue to wish it could be an openly declared American policy, for it would not only be a recognition of their prestige, it would add to their sense of security. On the whole, in spite of divergence of opinion in Japan in regard to the degree of her responsibility for Manchuria, there is unanimous conviction that there is economic necessity for the responsibility, and that the acquired treaty rights are absolutely vital to the maintenance of Japanese priority, which is essential to her economic opportunity. For this reason the clear definition of principles which was made on the appointment of Mr. Uchida to the headship of the South Manchuria Railway (June, 1931) is important. The principles are: preservation of the region from civil war, the Open Door to all trade and enterprise, and the maintenance of Japan's treaty rights.

Developing events (during the autumn of 1931) which have occurred since this study was undertaken indicate quite clearly the unrivaled importance and influence of Manchuria in determining Japanese international policy. They also show the importance of evaluating the other factors that may determine whether Japan will commit herself to coöperation or militarism in the "Balkans of Asia." Not only is it a matter of interest in relation to Japan herself, it is of real consequence to the whole world, for Japan's opposition to any interference arising in the League Council and its requirements has temporarily threatened to discredit it as an agency for the settlement of serious controversy between nations.

Her status as a great Power, Japan is determined to retain. Will she strive to retain it through continued coöperation with the League, through which she has gained a prestige among

22. William R. Castle, Jr., has been Assistant Secretary of State since April, 1927.

nations of which she is duly proud and which she can ill afford to lose? Or, will Manchuria alone and the immediate purposes of the Military determine Japanese national policy? Will the farsighted policy which has characterized Japan since the Restoration and which has transformed her from a feudal society into a constitutional state be thrown into the discard, or, will the evolution of her parliamentary government and the direction of her national policy by the civil government, freed from corrupt party practices, be allowed to continue? In order to answer such questions it is necessary to understand the character and vigor of parliamentary government which had been achieved before the military *coup d'état* of September 18, 1931.

## CHAPTER IV

### RECENT POLICIES AND PARLIAMENTARY DEVELOPMENT

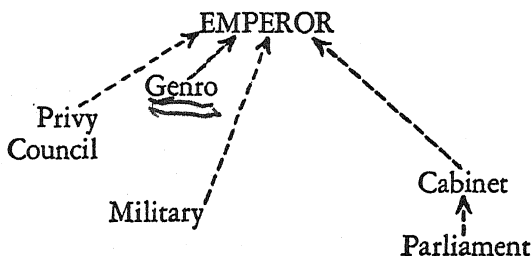
JAPAN'S parliamentary government has been in process of development since the days of the Meiji Emperor.

In the beginning the Emperor had personal advisers, a small "oligarchy of bureaucratic statesmen."<sup>1</sup> Five knights (samurai) of the Choshu and Satsuma clans formed a group of elder statesmen, called "Genro," who exercised great influence in directing affairs of government. The term "Genro" was applied to them in 1900. Then there was the Privy Council composed of those who were considered to be the Imperial Advisers, especially in foreign policy, whenever the Emperor should choose to consult them. The Council is nominated by the Emperor with the advice of the prime minister, who, before 1914, was always one of the elder statesmen; the twenty-four members include distinguished administrators, diplomats, judges, educators, generals, or admirals; cabinet ministers are members *ex officiis*. There is in the third place the Military, including both the Army and Navy, the General Staff Officers, and the Naval Staff Board, independent of the Cabinet; these are all directly responsible to the Emperor. It was Prince Marshal Yamagata in particular and those of his colleagues opposed to party government, who saw to it that the chiefs of the General Staff and of the Naval Staff were independent of the Cabinet, and answerable only to the sovereign. He favored bureaucratic government as against party politics in a parliamentary government. "When the civilian members of a Cabinet come to respect the pressure of an opposition, and resign because of it, the naval and military ministers can complacently continue to hold their seats, immune from political changes. It is this anomalous privilege of the military men which has proved a frequent cause

1. T. A. Bisson, "Democracy in Japan," *Foreign Policy Association Information Service*, VI, No. 8 (June 25, 1930).

of the undue preponderance of the military element" in Japanese politics and sometimes in Japanese diplomacy.<sup>2</sup>

Relationships between these various groups within the Japanese Government as they existed a decade ago may be clarified by a diagram as follows:



In 1925 when manhood suffrage was established, parliamentary government, representative of the people, was finally inaugurated. The Cabinet, however, is as yet responsible to the Emperor, and the prime minister is suggested by the Genro. Since 1925 the Cabinet has represented a political party.<sup>3</sup> According to the Constitution individual ministers are responsible to the Emperor. Cabinet responsibility to the lower house of parliament according to European practice is as yet unknown to the growing democracy of Japan; it is being actively contended for by the lower house.<sup>4</sup> Parliamentary practices have developed slowly, dominated by Imperial Advisers and the Genro, and manipulated by men experienced in government. Originally, the Japanese people could not be said to be politically-minded; they had no experience upon which to build a political consciousness.

Free compulsory education has been training an electorate. Popular opinion upon public affairs, which is still in the process of education, is steadily becoming a more and more important factor in political and national life. The Japanese are outgrow-

2. Inazo Nitobé, *Japan*, p. 186.

3. Party government was attempted by Marquis Okuma, 1914-16, and by Mr. Hara, 1918-22.

4. The Seiyukai Cabinet was named, December 12, 1931, in spite of a Min-seito majority in the House of Representatives of the Japanese Diet.

ing the tutorial leadership of their intelligent samurai, who thought in terms of the welfare of the nation as a whole. The nation is becoming a political democracy, even as it is also becoming an industrialized society. Political parties have been developing. Until the crisis in Manchuria, 1931, it could be said that the present was a period of transition in which the adjustments were being made from one political order to another as well as from one international policy and polity to another. The military action in Manchuria, initiated independently of the policy, knowledge, or instruction of the Foreign Office and Cabinet, was like a syndicalist "monkey wrench" thrown into the parliamentary machinery as well as into the international polity of Japan.

In order to acquire an adequate background for solving the problem we have set ourselves—Japan's probable attitude toward coöperative policies in Asia—and especially that we may comprehend the seriousness of the independent military action of September 18, 1931, to the constitutional government of Japan, we must needs describe the interrupted transitional phase in constitutional development which was in process.

There is nothing in the Constitution to guarantee the prestige of the Military; supervision of the Army and Navy is an Imperial prerogative; the Emperor often invites the chiefs of the General Staff Officers and of the Naval Staff Board, and the Ministers of the Army and Navy, to advise him. The prestige of the Military has been a matter of personal influence. The military achievements of the Sino-Japanese War and the Russo-Japanese War, which brought the nation into prominence and gave it place among the Powers, demanded wide recognition. And when it is remembered that personal relationships count for much throughout the East, and that the military leaders were men of achievement when more recent cabinet members were boys, then it is easy to understand why they have been able to hold their prestige. The characteristic respect for the older generation has helped the Military to retain its position of great influence. Nevertheless, it lost some prestige in 1919 when the disclosure was made that the Military had gone ahead and increased the number of soldiers in Manchuria in excess of the

quota agreed to by the Foreign Office. When the American Ambassador reported the matter to the Japanese Government, it was a surprise to the Emperor and to the Civil Government. Such independent military action was thereafter supposed to be held in check by the Emperor allied with the Civil Government.

The Privy Council, unlike the General Staff, has constitutional jurisdiction; it is an advisory body to the Emperor; it gives its counsel when asked, but it has no political responsibility. Its advice is asked upon such matters as Imperial House Law;<sup>5</sup> the interpretation or violation of articles of the Constitution; the issuing of proclamations and of Imperial Ordinances; and upon all matters relating to treaties and national pledges—which Americans would call gentlemen's agreements. The power of this body, however, has been, like that of the Military, a matter of personal prestige; it was included in the scheme of things before there was any real confidence in parliamentary government. The Privy Council in 1930 was dominated by Count Miyoji Ito<sup>6</sup> and two other reactionaries. Legally, the Government may submit proposals contrary to the advice or opinion of the Privy Council, and the Emperor has the right to choose between them. But this has never happened. Instead, the Privy Council usually takes advantage of such a chance to exercise power to find fault with the Government, and, sometimes, to act in collusion with the opposition for the overthrow of a ministry, thus demonstrating its control of government policy. Its last effort of this kind was in the summer of 1930 when it opposed the acceptance of the London Naval Treaty. In this episode the procedure was rather transparent. Preliminary reports and papers were distributed for examination only to the members of a subcommittee of the Privy Council; the councilors were to be allowed no time to read the documents before

5. Imperial House Law was promulgated simultaneously with the Constitution on February 11, 1889. It is "an exposition of the instructions transmitted through successive reigns of the royal family, and is intended to be a guide to posterity for all time." The privileges of the Emperor are established in the House Law; the Constitution, in distinction, is "a collection of the fundamental rules of the State, and lays down clear definitions of the relations that ought mutually to exist between sovereign and people." Nitobé, *op. cit.*, p. 187.

6. Not the Prince Hirofumi Ito who was adviser to the Emperor Meiji.

the general meeting. (The subcommittee was a group of reactionaries under Count Ito.) But on this occasion the scheme failed because Viscount Kikujiro Ishii, who was not on the committee, objected to the practice, and Futakami, the secretary, was forced to distribute the text of the treaty to all the councilors in time for careful reading before the general meeting. He omitted, however, to distribute the documents attached. The subcommittee opposed the treaty, especially the way in which the Government had concluded it. They offered numerous petty criticisms. The complaint was made, for instance, that the Foreign Office had submitted papers with the name of the Italian delegate spelled Afred Grandi instead of Alfred. Another complaint was that the word *sumpo*, a term of measurement, was used in the treaty when terminology of the metric system should have been used. Such matters, it was insisted, should be corrected before the body of the treaty could be considered. Unfortunately for the Privy Council these items were published in the newspapers, bringing ridicule upon this effort of the Privy Council to block the policy of the Government.

Back of what Americans might call filibustering over technicalities, was, however, a seeming loyalty to the prestige of certain individuals: a point that the Privy Council complained of was that the government then in power, headed by Premier Hamaguchi and the Minseito party, and the delegates at London, ignored the opinion of Admiral Kato, who was chief of the Naval Staff. Here it is easy to perceive a sympathetic alliance between Privy Council and Naval Staff, both of which had previously had much influence through their personal access to the Emperor. Moreover, it is also true, there had been somewhat inadequate clearance between Premier Hamaguchi and the Naval Staff during the London Naval Conference: Mr. Wakatsuki, head of the delegation, had taken with him to London, Admiral Kato of the Naval Staff and Admiral Takarabe, who was First Minister of the Navy, and the son-in-law of Admiral Count Yamamoto, creator of the modern Japanese navy. Mr. Hamaguchi, the Prime Minister in Tokyo, ignored the Chief of the Naval Staff, Admiral Kato, and advised the delegates at London through the Cabinet Minister, Admiral

Takarabe. The Civil Government thus controlled the national policy at the London Conference. Moreover, Hamaguchi's Minseito government, which was in power, stood for retrenchment, naval limitation, and friendship among nations; these were quite contrary to the policy of inflation and militarism, which had been the program of the Seiyukai, who were in opposition.

Since the London Naval Treaty was opposed by Admiral Kato, friend of Privy Councilors, and since the treaty supported by the Hamaguchi Cabinet was opposed by the Privy Council, it is quite easy to see how personal politics and parliamentary government were in the balance. It is likewise easy to see that it was also a struggle between civil government and military influence within the Constitution.

In previous times when such conflicts arose cabinets had fallen; this time the Privy Council attempted to dominate the policy of government, but failed. The force of public opinion, led by the press, which, in Japan, is independent of shipbuilders and naval personnel, had much influence; so much that the opposition, in order to gain support, let it be known that if the Government was defeated, the opposition—the Seiyukai party coming into power—would pass the Naval Treaty within five days. This transparent maneuver only revealed how fragile was the cause against the treaty; no sooner was this announcement known than the Privy Council quite suddenly gave its support to the treaty. This, of course, made the Seiyukai ridiculous and helped to reveal the true nature of the struggle. It was not a question of treaty or no treaty that was settled—the treaty was really desired by public opinion and supported by both parties—it was a struggle for power in the government: the Seiyukai party trying to overthrow the Minseito, and the Privy Council endeavoring to retain its former prestige; and both lost. It is reported that when the Privy Council was on the point of defeating the treaty, the Cabinet, contrary to all precedent, was ready to counter the Council's decision with a new proposal. In other words the civilian element was prepared to measure its strength with the Privy Council for the position of power within the constitutional government of Japan. The Privy Council had never lost an issue. If it had faced this test it would probably

have been defeated. Instead, it suddenly gave in. The treaty was ratified. The Civil Government, the Cabinet, and popular opinion had won against the Privy Council, the Military and the General Staff. It was a triumph for the Civil Government within the Constitution.

The victory for constitutional government in this crisis was possible because the nation supported the principle of disarmament as embodied in the London Naval Treaty; constitutional government won on a program of limitation of armaments. It is claimed by some, whose interpretation is to be trusted, that if Japanese public opinion had not been so strong for limitation of armaments it is not certain that the parliamentary victory could yet have been achieved. The non-militaristic character of developing public opinion is a circumstance equal in significance to the constitutional importance of the defeat of the Privy Council.

Moreover, the popular insistence upon the acceptance of the treaty, which contributed indirectly to the defeat of the Privy Council, was an event of profound significance. It offers an interesting evidence of a growing democracy. Yet, without discounting this fact, it might be remembered that the great stride in constitutional government was also, in large part, the work of the old order of personal rule. The influence of popular opinion and the influence of the Genro—the influence of personal aristocratic rule surviving in a developing democracy—is a combination of facts which is characteristically Japanese.

The details of this recent example of personal rule are interesting. First we should be reminded that Prince Saionji and his senior colleague, Prince Marshal Yamagata, were with the militarists in 1921.<sup>7</sup> This was but natural. In 1930 and 1931 the same Prince Saionji, the one remaining Genro since 1922, sponsored the Minseito party, lent his influence to developing parliamentary practices, and supported the program for international coöperation as directed by Baron Shidehara. Rumor has it

7. See pp. 164 and 177. Prince Saionji was in the Seiyukai party which was created by Prince Ito, until he became Genro in 1912. A Genro is above parties. Prince Saionji, who has often acted as Prime Minister, favors the power of the Civil Government within the Constitution. Nevertheless, as long as Prince Marshal Yamagata lived Prince Saionji acquiesced in the opinion of the senior Genro.

that Prince Saionji, this last of the personal advisers of the Emperor, let it be known that that Emperor named Hamaguchi and the Minseito Cabinet on his advice. If Prince Saionji had openly favored that Cabinet in a crisis between Cabinet and Privy Council, it is believed that the Emperor would have taken his advice and ratified the treaty in spite of the decision of any Privy Council in opposition to it. If such a thing had happened in the open the Privy Council would have been discredited forever. Instead, they voted for the treaty; even though their position was ridiculous, they had saved their prestige, or, in the language of the East, they had saved face.

Japanese interpreters elucidate the fact that Prince Saionji (who was the *protégé* of Prince Hirofumi Ito, creator of the constitutional government of Japan, in 1889) did not say openly that he advocated a parliamentary government like that of England, because, if he did, such advocacy might be taken to imply that the power of the Emperor could or would be limited. This could not be said in Japan; for the Emperor, as direct descendant of the Sun Goddess—creator of the Japanese people—is head of the nation and all the people belong to one big family. Since this is true, the Emperor, of course, associates himself with the popular will, and popular will is expressed by the Emperor. This relationship, it is claimed, makes for parliamentary government and preserves the sacred character of Imperial Authority. The power of such an Emperor could not be limited; if it could, or if anyone should openly say that it could, then the sacred character of the Emperor would be denied. Not even a Genro committed to parliamentary government could do this.

At this point we should pause to clarify a matter which, recurring from time to time, usually eclipses the essential issue. It is the matter of the Emperor's Prerogative. In 1931, Baron Shidehara, for a seeming "slip" in this regard, was temporarily under a cloud; and for a time in 1928, during the discussion of the Kellogg-Briand Pact, the Privy Council greatly enhanced its prestige by its insistence upon the strictest adherence to both letter and spirit of the law in the preservation of the Emperor's supreme position. The Privy Council attempted to defeat the Paris Pact by pointing out that the phrase, "in the names of their

respective peoples," which appeared in Article I, did not fit the Japanese constitutional recognition of the Emperor's Preëminence.<sup>8</sup> This discredited the official supporters of the Pact and gave temporary ascendancy to the Council. The phrase, which if included in the ratified Pact would have involved a slight to the Emperor's sovereignty, was finally declared "to be inapplicable in so far as Japan is concerned." When Premier Tanaka, in deference to the demands of the opposition, issued this declaration, the Pact, demanded by popular opinion, received the necessary official approval.<sup>9</sup> The Privy Council was thwarted by parliamentary maneuver.

In March, 1931, Baron Shidehara chanced to say, in defense of the London Naval Treaty, that it had the Emperor's approval. This was bringing the Emperor into a controversial discussion and was unworthy the honor due His Majesty. This slip was taken up by the opposition as an insult to Imperial Authority. In consequence, the prestige of Baron Shidehara, then Acting Prime Minister, was much affected. He later apologized. Upon the resignation of Mr. Hamaguchi as Premier, Baron Shidehara, who had been Acting Premier, was continued as Foreign Minister; and Mr. Wakatsuki became head of the Cabinet.

Whenever this matter of Imperial Prerogative comes to the fore, it is like a cloud which for a time conceals the contours of the landscape. It should be evaluated as a thing apart; when Imperial Prerogative is duly recognized, the evolutionary trends in parliamentary development, public opinion, or foreign policy proceed without interference. Such punctilio may be said to belong to the old Japan, and is preserved, in part, as a possible tool with which to check too great innovation. It should not be surprising that in the change from absolutism to constitutional

8. The text reads: "The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another."

9. A copy of this declaration of June 27, 1929, was sent to the signatories of the Pact on July 24. It reads: "The Imperial Government declare that the phraseology 'in the names of their respective peoples,' appearing in Article I of the Treaty for the Renunciation of War, signed at Paris on August 27, 1928, viewed in the light of the provisions of the Imperial Constitution, is understood to be inapplicable in so far as Japan is concerned."

monarchy a certain distrust of the new and adherence to the old should have persisted. Certainly in the creation of the young United States there was distrust of democracy to the extent of creating a nonpartisan electoral college to be composed of trustworthy men who should choose the president; and the matter of suffrage was left to the states, which in turn delimited the right to vote by property or religious qualifications. In Japanese experience the same distrust of democracy manifests itself in the preservation of the sanctity of Imperial Preëminence; the development of ceremonial Shintoism perpetuates it.

Respect for Imperial Prerogative is essential to the Japanese conception of the sacred origin and character of the Imperial Family; official Shintoism provides the forms and ceremonies for individual and collective recognition of the ideals involved.

The roots of Shintoism, the State religion of Japan, are to be found in an immemorial ancestor worship. This universal practice relates the spiritual conception of the monarchy to the everyday life and thought of the Japanese people. Ancestor worship in Japan is a living institution rooted in the mental habits and social groupings of the people. It is common to the whole nation without distinction of creed. It also gives rise to the family system by which the individual members of Japanese society are bound into a single organic whole. In this system every Japanese family considers itself an off-shoot, or branch family, in direct line of descent from the line of the ancestors of the Emperor himself. . . . Although these underlying spiritual elements have been inherent in the Japanese monarchy from the earliest times, it was not until the early years of the Meiji era that Shintoism was given the unified nationalistic form here outlined. The leaders of that period by a piece of brilliant statecraft, so reconstructed the Shinto religion as to take the ancient mythology of race into the service of the state. . . . As the earthly representative of the gods and as himself one of their number, the Emperor became the personification of Japan and the focus of national patriotism.<sup>10</sup>

He is the representative of the nation and the symbol of its unity, in a sense more comprehensive and enduring than is true of the British Crown.

The position of the Japanese ruler *vis-à-vis* his people is unique; his

10. Bisson, "Democracy in Japan," *Foreign Policy Information Service* (June 25, 1930), p. 150.

power is absolute; the authority he exercises is most like the *patria potestas* of ancient Rome.<sup>11</sup>

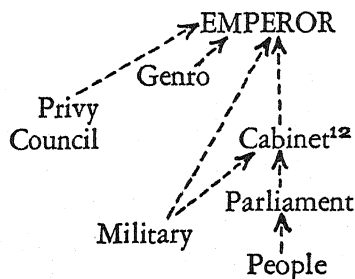
Reverence for their Emperor is, through ceremonial Shintoism, something apart from any particular religion, something quite distinctive. All school children are required to visit, at least once, the Grand Imperial Shrine of Ise; they are instructed in its meaning and in the ceremonials suitable to its sacred character. Numerous shrines to national heroes as well as the great shrines to the Meiji Emperor, are perpetual reminders of the entity of the Japanese race and nation. In Keijo a new shrine to the Meiji Emperor, which is situated on a hill dominating both the city and the surrounding country, is to Chosen a constant reminder of the sacred character of their present Imperial Era. Here and at Port Arthur the shrines are outward manifestations through which we perceive, to a slight degree, the character of the patriotism of the Japanese. To them it is akin to religion. Remembering all these manifestations of the institution of official Shintoism, it is quite understandable that due honor should be guaranteed this concept.

In the everyday workings of parliamentary government, however, and in the analysis of the problems of economic prosperity and the direction of an international policy, the Japanese are very practical. Busy with realistic factors rather than sentimental values, it sometimes happens that slips in phraseology occur. The opposition, or reactionaries in either party, are ever ready to seize any opportunity to make capital of a slight violation of Imperial honor. Whenever these episodes occur it is necessary to remember the character of the Japanese attitude and training, and not confuse this issue with the big trends in national development or international polity. In regard to the matters at issue in these parliamentary struggles over the London Naval Treaty and the Paris Pact, there was no real opposition except from

11. Nitobé, *op. cit.*, pp. 184-185. The Japanese Emperor "rules the country more as a duty to bring peace and blessing than as a right to enforce his will upon his subjects. . . . The rights to be acquired by his people are to be bestowed by him as a charismatic gift and not under constraint. In one word, he sacrifices a part of his authority in order to endow his children with a larger measure of it. The Japanese Constitution is therefore an ordinance, in the sense that it is not a contract between the ruler and the ruled; it is unilateral in its origin, in that it is devised without the assent or the consent of the governed."

militarists allied to older constitutional relationships. The ideals embodied in these documents were widely accepted and popularly demanded; moreover, they were advocated by both political parties. The controversies in each case concerned technicalities of wording or procedure; they were of constitutional import only. Constitutional triumph was secured because official and public opinion were both committed to the measures proposed—limitation of armaments and the renunciation of war as an instrument of national policy in the adjudication of international disputes.

If we redraw our diagram, we can see what the status of the various groups in the organization of government had become by the summer of 1931:



With the passing of the older statesman, Prince Saionji, there will be no Genro, for the last of the Genro refuses to support a successor. Should he appoint a successor or allow the Privy Council to become his successor, Japan might never have true parliamentary government.<sup>13</sup> As it is, when the senior members

12. The Ministers of the War and the Navy are in the Cabinet. The military budget is controlled by the Cabinet and Parliament. To this extent the Civil Government is in control of the Military in time of peace.

13. Since it is necessary to the concept of Imperial Preëminence that someone should take responsibility for the Emperor so that he shall be above criticism for the choice of a Cabinet and aloof from party politics, some substitute for the Genro may be created. Some Japanese understanding governmental trends suggest that in the event of there being no longer any Genro to bear the onus of government, it may be that a committee will be created to act in a similar capacity; this committee might be composed of the president of the House of Peers, the president of the House of Representatives, and the president of the Privy Council. The presidents of the two parliamentary houses are chosen by those bodies, respectively; the president of the Privy Council is named by the Emperor upon consultation with the prime minister. Should this committee ad-

of the Privy Council have gone, it may not be so tenacious of its prestige; it will, in all probability, be composed of men who are believers in parliamentary government, men who have been or are cabinet members, and who are experienced supporters of parliamentary practice. Without the elder statesmen—the Genro—and with a Privy Council composed of men with parliamentary experience, the framework of responsible parliamentary rule and the Military, with the Emperor the source of authority, will comprise the government of Japan.

For the present, however, in spite of the triumph of parliamentary government the Privy Council still lives. A new test, however, of its capacity to interfere with the adjustment of Japan to the new international structure of world politics is likely to arise in connection with the question of the adoption of the Optional Clause in the Statute of the Permanent Court of International Justice. Will Japan pledge herself

to recognize as compulsory, *ipso facto*, and without special agreement in relation to any other Member or State accepting the same obligation, the jurisdiction of the Court in all or any of the legal disputes concerning: (a) the interpretation of a Treaty; (b) any question of International Law; (c) the existence of any fact which, if established, would constitute a breach of an international obligation; (d) the nature or extent of the reparation to be made for the breach of an international obligation?<sup>14</sup>

It is reported that Baron Shidehara, when Foreign Minister, favored its adoption; yet since it is a matter of foreign policy it must ultimately come before the Privy Council. The matter, therefore, awaits the opportunity and the occasion for presentation to the Privy Council when the Privy Council cannot refuse to approve it. To present so important a matter as this and give the Privy Council an opportunity to triumph by defeating it might delay the complete establishment of parliamentary rule. Such circumstances should be kept in mind if Japan appears to hesitate to act upon the Optional Clause.

There are, in fact, reasons for hesitation over the adoption of

vise according to parliamentary practice, the fiction of Imperial Sanctity, Pre-eminence, and Authority could be preserved.

14. Text is in M. O. Hudson, *The Permanent Court of International Justice*, Appendix, pp. 340-349.

the Optional Clause which might justify Privy Council opposition to it, reasons which have to do with unstable conditions in Asia. Japan has a special problem in the possible interpretations that might result if treaties concerning Manchuria were presented to the World Court for elucidation. Would they be interpreted in the literal sense according to western practice? Or would they be interpreted according to conditions in Manchuria which have resulted in action that at times appears to have exceeded the letter of the law? Even Japanese trained in western law explain that Japan's jurisdiction has extended in Manchuria from circumstances of natural growth and is "not protectable by occidental jurisprudence." The solution of that problem, they claim, is too vital to permit them to intrust any question of treaty interpretation to judges trained to consider the letter of the law instead of the circumstances of the case. They argue further that Japan should be left to deal with China bilaterally, and by "oriental methods of compromise." Thus, consideration of the Optional Clause might open the whole question of the status of Japan in Manchuria, and give the Privy Council real ground for an obstructionist policy, and, in consequence, strengthen its position in the practice of government and within the Constitution. If, however, mutual agreement concerning, or redefinition of, these treaty rights shall be achieved, this obstacle to Japanese acceptance of the Optional Clause may be removed.

This whole question takes on a new aspect now that China is an active member of the League. Before that treaty relations with China could be held by Japan to be a matter of local concern, one between two oriental nations, to be dealt with in oriental fashion. But with China's new policy of committing her cause to the League of Nations, the matter takes on a different mien. No longer is it a matter for unilateral decision by Japan, no longer may her internal constitutional development evolve according to forces and opinions purely Japanese. It is possible to imagine that China, in spite of her own legal practices to the contrary (as described in Sec. II, chap. i), may attempt to defend her rights in terms of the letter of the law in the western sense. Moreover, China's policies and her connection with the

League in relation to Manchuria have already been the occasion for revealing the intricate and fluid process of constitutional development in Japan. A matter quite complicated enough in terms of Japan itself has become infinitely more complex and far reaching in its effect because it has international complications.

Should China really adopt in principle, and attempt to work out in practice, a policy along the lines suggested at the end of Section II—the discussion of the abolition of extraterritoriality—the whole situation in eastern Asia might be changed. Until now, Japan, as the Permanent Member of the Council, really represented Asia in the League. She enjoyed a prestige and sense of superiority therefrom that made her confident that her judgment was supreme in Asia. Under new conditions, with China also active and committed to league principles, Japan may meet a real test of her will-to-coöperate.

That will-to-coöperate, or Japanese foreign polity, is for the present largely a matter of internal political evolution and national psychology. Perhaps also, in a measure, it will be a matter of Japanese financial stability in the world economic crisis.

In terms of modern popularized psychology, the Japanese have a double handicap. Because Japan is small in area, and because her position of prestige among the nations is newly acquired, she suffers from an "inferiority complex" and is sensitive to criticism and defensive of her rights. This was clearly manifest in the solidarity with which she backed the militarists when the League Council interfered; she would brook no criticism nor outside interference. On the other hand, because of the disorganized condition of China, Japan looks upon her with distrust, and, in consequence, is handicapped by what is known as a "superiority complex." This in turn is manifest in her apparent assumption that she is the judge of the rights in Manchuria which she is bound to respect; that she is a law unto herself, or the judge of all law.

Notwithstanding these outward manifestations of temperament, which add the inscrutability of the psychology of a people to the complexity of economic rivalries, and the incompatibility of two diverse political administrations, there is a political

problem purely Japanese. The military action in Manchuria on September 18, which was independent of the authority of the civil government, was, in effect, a "strike" against the evolutionary development of constitutional government, and against the coöperative, peaceful methods of civil parliamentary rule which were growing up. It was a blow which may have dire consequences to progress, prosperity, and peace, all of which are as essential to Japanese well-being as to the territorial and administrative integrity of China.

Should vigorous reversion of opinion come, it could not result in revolution. This would not be Japanese. The Emperor, in consonance with the sacred character already described, would not be too much at variance with popular will, for popular will is expressed by the Emperor, the father of his people. The people, idolizing the Emperor, owe him loyalty, the highest of their virtues; were they disloyal, they would be untrue to themselves. Disloyalty would be sacrilege. Since the relationship of the Emperor to his people "partakes more of the nature of a tender father than of a stern master," there is in the Japanese State a respect for the needs, ambitions, and desires of the people, just as in the family there is respect for its members. In view of this delicate and intangible relationship between the Japanese Emperor and his people, it is confidently asserted that Japan could not have a revolution. A more commonplace way of stating it is to say that Japan is no longer, as formerly, a static society. Changes that have been taking place make it appear that Japanese political development has become an evolutionary one. This interpretation was exemplified in the struggle over the London Naval Treaty which we have discussed. In this instance the Imperial Authority was strengthened in popular favor both by the triumph of the Civil Government over the Military and by the triumph of constitutional principles of parliamentary government which were secured through its consent. The Imperial Government, in reality, carried out the popular wish; the sacred character of the Imperial Will and popular parliamentary government both prevailed.

The military demonstration against anti-Japanese associations and the anti-Japanese boycott in Shanghai, January, 1932,

indicated that the boycott of 1931-32 was threatening the economic prosperity which the Military would win by means of their police power in Manchuria. Closing the Chinese market to Japanese manufactured goods may deprive multitudes of Japanese of their all too limited ability to earn a living. Other boycotts have been effective.<sup>15</sup> On this occasion, however, no one can foretell the endurance of the Japanese in their devotion to the Manchurian cause, and to the heroes enshrined at Port Arthur. Intellectually, there has been popular support for the London Naval Treaty, the Paris Pact, and the principles of co-operation and conciliation in the abstract. Emotionally, there was popular support of the Military in the area of Manchuria, 1931, especially as it was identified with their right to exist. Where the balance will rest the future alone can tell. Nevertheless, there are factors beyond the intellect and the emotion—factors inherent in the exigencies of the situation—which may determine the ultimate policy to which both intelligence and emotion may subscribe.

Meanwhile, it is necessary to understand the patterns of Japanese thought by becoming acquainted with the content of Japanese education. Only then will it be possible even partially to evaluate public opinion.

15. There have been seven boycotts since 1907; those of 1922 and 1928 were particularly effective. Concerning 1928, see above, p. 166.

## CHAPTER V

### POTENTIAL INFLUENCE OF THE RISING GENERATION IN THE FORMULATION OF NATIONAL POLICIES

THE program of the Restoration throughout has been one of education in every line. Today it is Japan's proud boast that more than 99 per cent of Japanese children of elementary school age are actually receiving instruction. For the six years of elementary education the curriculum has been carefully planned by the Ministry of Education with the aim of inculcating ideals of citizenship: loyalty to the Imperial Family expressing itself according to the traditional military ideal has been the theme. Since the days of the Meiji Emperor, Japan has been endeavoring to build up loyalty to the Imperial Authority in order to replace the influence of the military governors who were prominent during the feudal era. The objective has been to make citizens useful for the purposes of the state, in place of the local loyalties, which lasted down to the Restoration. Classroom exercises in history, language, and ethics are utilized for the purpose of developing a national ideal; texts have been standardized for the entire nation. No departure from the system is permitted; like patterns are stamped on all minds. A brief summary of the content of texts authorized by the Ministry of Education for the Sho Gakko (the six-year elementary school) may be illuminating.

The twelve graded readers, two for each year, treat of all sorts of subjects, for example: Tea Raising, Persimmons, The Echo, Our Town, The Sun and Wind, Letterwriting, Great Japan, The Sea, The Emperor, Getting Up Early, Companions, etc. Yet in every reader, the textbook makers take pains to include sections in which it is possible to stress loyalty to the State centered in the Imperial Family and expressing itself in military form. By way of illustration we may take the story of "The Sailor's Mother" in the ninth reader:<sup>1</sup>

1. The following quotations are sight translations made directly from the texts by an American, resident in Japan, who reads Japanese.

It was the time of the war between Japan and China, 1894-1895, and on a certain day a sailor on board our gunboat Takachicho was reading a letter written in a woman's hand, and crying over it. A certain officer who was passing near saw this, and thinking that the sailor's attitude was unusually effeminate said, "What is the matter? Are you stingy with your life? Are you homesick for wife and children? What kind of an attitude is this for one who has become a sailor and has gone to war? The disgrace of the sailor is the battleship's disgrace. The battleship's disgrace is the nation's disgrace." The sailor stood up startled, looked straight into the officer's face, and then baring his head he said, "Your words are too severe. I have neither wife nor children. I also am a Japanese and should I be stingy with my life? But please read this," and saying this he handed over the letter. The officer read as follows (it was from the boy's mother):—"From reports you did not go into the naval battle of Tayoshima; and also on August 10, in the attack on Ikaie, although you took part, you did not especially distinguish yourself. Your mother cannot avoid deep regret. For what did you go to the war? Wasn't it to throw away your own life and pay back the debt of gratitude you owe the Emperor? The people of the village from morning until night in various ways are exceedingly kind. 'Her boy has gone to the war to fight for our country and we want to see that she doesn't feel inconvenience in any way, and if you have any need please tell us without reservation.' Thus they speak kindly, and your mother, whenever she sees their faces and recollects that you have done nothing, feels as if her heart would break. I go every day to the Hachiman Shrine [to the god of war] and I pray from my heart that you may achieve some deed of gallantry. Your mother has a human heart and does not wish to bring suffering to her child. I am sure you will understand with what thoughts I have written this letter." The officer read this and involuntarily tears fell from his eyes, and grasping the sailor's hand he said, "I was wrong. I cannot restrain deep admiration for your mother's spirit, and your feeling of regret is also natural. But you must remember that present day warfare differs from that of old. It is not easy for the individual to go out by himself and achieve personal glory. The officers and soldiers are a unit; all must work together. The first essential is that each one should obey the commands of his superiors in all respects and should give attention to the performance of his special duty. Your mother tells you to throw away your life and return your debt of gratitude to the Emperor. The time for this has not yet arrived. Everybody on the ship regrets that we did not get into the naval battle of Tayoshima. But this could not be helped. There is time for glorious fighting yet, and then, we will together achieve some distinguished service and raise aloft the name of our Takachicho (name of their ship). Explain this matter carefully to your mother and tell her to be at peace in her heart." Thus he

spoke. The sailor listened with bowed head, raised his hand in salute, smiled and departed.

Specific training in ethics given through another set of textbooks covers the entire range of moral virtues as the Japanese conceive them. The subjects discussed in Book I include: Helpfulness, Politeness, Obedience, Family Life, The Emperor, Military Loyalty, Honesty, Neighborliness, etc. Each of the texts for the children is accompanied by an instruction book for the teacher giving the purpose of the lesson, an elaboration of the text for the use of the instructor, and suggested questions to be asked of the children. The lesson on Loyalty from Book I will enable us to understand the character of this instruction. Loyalty is interpreted—here and throughout the textbooks—as military valor. The illustrating story is about a soldier named Kikuchi, who, although struck by a bullet and dying, did not take the trumpet from his lips but sounded it with his dying breath. The teacher's instructions for this lesson in the *Teacher's Manual* are as follows:

1) The object of this lesson is to arouse a feeling of Loyalty and therewith to foster the purpose of sacrificing one's self on behalf of the Emperor.

2) Tell the story of how in war with China our soldiers had occupied Korea. At a certain time the troops at the head, going on in the dead of night, fell into an ambush and were fired on at close range. Instead of retreating they dashed on and the trumpeter who was wounded kept the trumpet to his lips and sounded it with his dying breath.

3) An exhortation to the children: If at any time the Emperor gives the command, one who is a Japanese must go bravely to the battlefield. When he has reached the battlefield he must be carefully obedient to the commands of his superior officers. And he must rush through fire and water, and perform his duty on behalf of the Emperor. Private Kikuchi, who offered up his life, performed his duty nobly and manifested a magnificent loyalty to the Emperor.

The purpose of the whole scheme is told within the textbooks themselves; for instance: "To be a good Japanese one must always look up to the august virtues of the Emperor and Empress, must always revere the Grand Imperial Shrine of Ise (Shrine of the Sun Goddess who is mother of the Imperial line), and

must develop a heart of loyalty and patriotism. . . ." And in the sixth book of ethics we find this explanation of the whole program:

In ancient times, the duty of protecting the country rested on the military class, the Bushi or Samurai; but in the Meiji period the general conscription law was passed, the entire nation is liable for military service and is responsible for the protection of the country. On this basis adequate naval and military preparations have been made, and in the two recent wars, one with China, 1894-1895, and one with Russia, 1904-1905, we have been able to make our national glory shine throughout the world.

Farther on we read concerning "The First Duty of Citizens":

Today all the civilized countries of the world are co-operating with each other to the limits of their power to avoid war and preserve peace. However, there is no assurance that for various reasons war may not break out between some of them. For that reason it would be a very serious matter, one of supreme importance, if by some mischance our country were put in a position of peril. For that reason it is most important that we should unitedly plan the protection of our country and the preservation of its safety. From ancient times down to the present never once has our national glory suffered from a foreign power. This is because of the august virtues of the successive generations of Emperors, and the loyalty and military bravery of our ancestors. We, with hearts like our ancestors, must protect the country that has thus been preserved to us and must see to it that our glorious historical record is not sullied. In our country all male citizens between the ages of seventeen and forty have the duty of military service. Accordingly, when a man reaches the age of twenty he must undergo examination for conscription. From those of good bodily health, a certain number are selected by lot, and go into active service in the army or navy. If a serious situation should arise, those who are in active service and those who have the duty of military service are summoned for military duty. The matter of protecting the country by military service is our very highest duty as citizens. And, in addition to this, it is a very great honor. Let us, while we are young, improve our bodies and develop vigor so that after we have grown up we may pass our military physical examination, and enter the army and navy, and perform our glorious duty in the protection of our country. And even those who are not to be soldiers must develop body and mind with the determination to be able to meet any national emergency that may arise.

The elementary texts from which we have been quoting are published by the Ministry of Education and are the only texts

used in the Sho Gakko; other texts, published with their permission, may be used in the Chu Gakko and Koto Gakko (middle school and high school). One Chu Gakko text very widely used is by Shiba Kizumori. The introduction to this *New National History for Middle Schools* says:

Our Empire of great Japan with an Emperor above, ruling in a single line from immemorial ages, and citizens below, matchless in loyalty and patriotism from ancient times to the present, has never once received a foreign insult. Such a national character is without parallel in all the world, and is indeed ground for great pride on the part of our people.

When one grasps the significance of all this and perceives the patterns of thought indelibly impressed upon the mind of every child, one can better comprehend how the mere suggestion that Japan should withdraw from her present position in Manchuria, must be interpreted as an insult to national prestige, and regarded as intolerable by the Japanese people. It would be disloyal to the heroes enshrined at Port Arthur who sacrificed themselves to protect the Japanese frontier from the Chinese and Russians. To surrender their position would be disloyalty to the emperor in sharp contrast to the loyalty of the military youth who won prestige for Japan. The Japanese populace may not understand economic arguments, they may not comprehend the significance of a buffer state, or the meaning of stability in the face of chaotic conditions in China, but they do understand the emotional appeal.

This, however, is not the whole story. We have already made reference to recent changes in the elementary school texts at the insistence of women's organizations and the League of Nations Association.<sup>2</sup> We have also recorded the recent emendations to texts, including descriptions of the origin and working of the League of Nations, which have definitely emphasized the value of international coöperation and non-military methods of international policy. But the rank and file of Japanese from fifteen years of age upward cannot be influenced by these emendations; and even for those now in the elementary schools there is more emotional appeal in the stories designed to promote

loyalty than in the intelligent discussions of international friendship.

When Americans remember that the boys of seventeen who had read *Uncle Tom's Cabin*, ten years later became soldiers in the cause for which their youthful emotions were fired, they must realize that this program of education in Japan may be of tremendous significance. The recent changes in curriculum content which include details concerning the League of Nations, its origin, purposes, and functions, may in the long run, however, create a new attitude, one less nationalistic, less jealous of prestige and power than that held by the parents of the school children today. The inclusion of ideals of conciliation, coöperation, and peaceful methods for the adjudication of international differences may in the future mean unequivocal support for the newer trends in national policy. Much will, of course, depend upon the character of instruction in the new subject matter.

In this connection it is interesting to recall that the nationalized, secularized schools of France, created by Jules Ferry in the eighteen-eighties, trained the youths who in their majority supported republicanism *versus* ultramontanism for the nation. That free, compulsory, secular education established by the Ferry Laws created a citizenry whose public opinion was strong against clericalism and militarism in the final issue of the Dreyfus case; and its chosen leaders at last achieved the separation of Church and State in 1905. Remembering this, one wonders what a new generation in Japan, trained in new concepts of international relationships, will think about national policies in relation to international polity; and one may well speculate as to what influence the present generation of Japanese school children may exercise when they arrive at their majority.

The Japanese policies of education have been creating a nation loyal to the Imperial Family, proud and ready to give them military service. Now this nation has the suffrage; it has an enlarged content of education. Will the emotional stories of military heroism and "Loyalty to the State centered in the Imperial Family and expressing itself in military form" predominate? Or will loyalty to an Emperor, the head of a nation exercising an

international policy of coöperation, conciliation, arbitration, and judicial settlement, hold sway? Will they give overwhelming support to the newer trends, and commit Japan irrevocably to coöperation in Asia as well as in Europe?

The answer to this question will be determined, in part, by forces and ideas other than those to be found in textbooks or in courses of study designed by the Ministry of Education. Pressure of population and consequent economic problems in contemporary Japan are resulting in new evaluation of national policies by the youth of Japan. Men of mature years who remember the military achievements of the last century complain that the men of the younger generation to whom, alas, the Manchurian question must be bequeathed, do not appreciate its significance. The younger generation, their elders fear, may be much more willing to compromise, for they are much less conscious of the significance of the region in relation to Japan's security in Asia, because that security has been an inheritance which they have been taking for granted. These young men, say the men of fifty, may in the long run be willing to compromise a position because they have not sacrificed to attain it. The Manchurian crisis of 1931, however, has shown that this has not yet happened.

Men who make this criticism of the younger generation also know, but discount, circumstances which are being experienced by their juniors; the younger generation is face to face with stern economic necessities. The program of industrialization in Japan has put heavy burdens of taxation upon the people; the advantages have not been sufficiently distributed. Furthermore, young men have been resenting more and more the time demanded for military training because it has often taken them from civil employment and left them without occupation at the end of the period of service. In consequence, they are manifesting less and less traditional pride in or enthusiasm for military training.<sup>3</sup> The younger men are, of course, emotionally attuned to the ideals conceived for them, but practically they are con-

3. An analysis of student public opinion on this point given by Frank H. Hedges in *The World To-Morrow*, January, 1932, p. 8, is, I believe, substantially correct.

cerned with getting a living. The burden of taxation for extensive armaments is heavy: at present 42 per cent of the national budget and consequently 42 per cent of each man's tax.<sup>4</sup> Japanese themselves admit that Japan is spending proportionally greater sums on armaments than any other civilized Power on earth.<sup>5</sup> Therefore such programs of national policy as shall lessen those burdens are welcome. Even the emotionally militant among them explain that it seems necessary, if possible, to limit expenditure for armaments in order to have roads and other needed benefits; this for simple economic reasons untinted by theories of international policies and politics. From this group of younger men, militant and nonmilitant, there was vigorous support of the London Naval Treaty as a sensible measure of economy; and, for the same practical reasons, until September, 1931, there was every evidence for continued support of policies leading to peaceful adjustment of international rivalries.

The young men of contemporary Japan have not only been hostile to the financial burden of armaments which takes funds from productive enterprises that should develop industry and provide employment at home. They have also been critical of the structure of their newly industrialized society which, they think, has left them face to face with stern necessity. During the recent economic depression—the environment in which young Japanese are formulating new points of view—they have been taking a third position which is still further removed from the cherished imperialistic programs of the older generation than that of the non-aggressive group, who would direct resources to industrial development. When only 20 or 30 per cent of the men graduating from high school and university can find employment, they question the existing order. Perhaps the educational program has trained too many for clerkships and professions, and there are no longer places in these vocations because supply is exceeding demand. On the assumption that this is true, the Ministry of Education is at work to revise the

4. These figures vary according to the methods of calculation. Some come out higher; this seems to be a moderate estimate.

5. E.g., Jotaro Yamamoto, in his volume *Keizai Kokusaku No Teisho*, reviewed in the Sunday *New York Times*, June 7, 1931. See below, pp. 234-235.

curriculum and provide training for varied occupations. This remedy seems scarcely adequate, especially in view of the careful analysis of the situation given by Dr. S. Washio in the *Japan Advertiser*, November, 1930. His facts indicate that the problem is not sufficiently transitory to be materially modified by more varied vocational training. He explains, in part, as follows:

According to the statistics of the central office of employment agencies the initial salaries for university graduates for 1929 ranged from ¥55 to ¥85 averaging less than ¥70. The graduates are classified as 41.8 per cent employed or self-supporting; 41.9 per cent unemployed; 16.3 per cent continuing study. In the report of employment agencies those graduates who do not apply for work must be classed as employed or self-supporting. But as a matter of fact many do not apply, thinking it useless. A majority classed as self-supporting have either returned to their country homes or are living dependent upon relatives or friends having precarious and irregular jobs if any at all, so that the real percentage of the employed is probably nearer 20 per cent. . . . A majority of the graduates are condemned to unemployment and a still greater majority can never hope to earn much more than the average wage of a skilled laborer. In short, the economic status of the average salary earner, as young men see it, has become as uninspiring as that of wage earners, while the chance of unemployment is still greater.

As a matter of fact, unemployment in Japan is more seriously a question of salaried classes than of wage earners. As a social problem the sufferings of salary workers from unemployment feature more conspicuously in the press and in the concern of the government than those of wage earners. It is admittedly a harder problem to deal with, because salaried men once dismissed cannot so easily be re-employed as wage earners and also because salaried classes have been used in the past to a higher standard of living than wage earners. This habit is going to be upset. . . . If the principle of demand and supply is to be applied, the case for salary earners is distinctly poorer as shown by 80 per cent unemployment of university graduates. But in the stage of readjustment there arise special psychological and social factors that are peculiar to a nation of middle class people like Japan.

The movement for organization of the proletariat is not yet in sight. The Japanese middle classes are still mentally slumbering in the past ideology. But the economic tendency that is automatically developing is unmistakable.

With these facts in mind it is understandable that an honest and searching analysis of the results of the economic order exist-

ent since the Restoration has been made by university students who are facing the problem of the immediate future. It is likewise easy to perceive why the educated unemployed have been fertile ground for Russian propaganda and communistic theorizing. Much of the questioning, however, has been but the natural outcome of Japanese conditions. The existing order against which they have protested has not necessarily been capitalism *per se*, for Japan has unwittingly and of necessity evolved a kind of state socialism essentially Japanese. Instead, the criticism has been applied to imperialist projects of the industrialists, who have been exploiters for their own advantage. Has the industrialization of Japan resulted in greater welfare to the general public? Is economic imperialism expensive to the common man? Imperialism has been the program quite naturally and quite generally adhered to by business men in the fields of international competition. They have wanted raw materials, markets, spheres of influence; they have at times been belligerent in their demands for their place in the sun. The young have not all been vigorous supporters of a continuation of this policy; instead they have often been critics of any aggressive program because of the expense and sacrifice involved. There seem, however, to be three main groups: the sincere theorists, sometimes leaders, who question the results of the old order; business men, struggling for place and power; and young men, critical because of their own economic problems.

If we would weigh these opinions we must include the elder statesmen, the pioneers of the Meiji Era. They, including both the militarists and the civil leaders, and the men of active business leadership, men of forty-five and over, we may identify as the oldest group; those under twenty-five we may designate as the youngest group; and the rest—men who have attained maturity since the World War and especially during the years when Japan has been associated with the League of Nations—we may call the middle block. This last group and the moderates of the oldest and youngest groups are thinking; they are trying to find a way out of the inevitable militarism and disasters of the older imperialism and the catastrophe of revolu-

tionary programs championed by some of the youngest group, who are both inexperienced and desperate. Conditions among laborers—agricultural and industrial—are difficult, and their opinions are equally difficult to evaluate. But here tradition and industry, such as prevailed under former paternalism, are potent factors for stability. It has been among the educated that revolutionary doctrines have held sway; men in universities, in particular, have been the active questioners of the *status quo* in Japan. The youngest block—men under twenty-five—are of two groups, conservatives and radicals. The radicals, sufficiently numerous, have provoked school and university authorities to measures of vigorous discipline. They have even been imprisoned by the Government. Others have caused deep concern to the educational executives for the general disturbance they bring about, which has manifested itself in student strikes against educational or administrative policy, or incendiary discussions and questionings of the existing social order. The conservatives of the student group may be counted with the middle block, who seek a constructive program which may avoid both the evils of an imperialism such as ended in the war in 1914, and the disasters to labor and capital alike, incident to the Russian Revolution. Before September, 1931, the middle block may have appeared to have a majority; but their answer to Japanese problems was not definitive, nor was their balance of power secure.

Meanwhile, throughout the twentieth century, the literary men, novel writers, and dramatists have been weaving together old ideas and new ideas. Under the leadership of Natsume they were led to appreciate oriental values; under Arishima, who gave his landed estate to those who are living on it, the proletariat have been encouraged to set forth their ideas. So far, there is no great Japanese proletarian spokesman. Marxism is intellectual Marxism. It may happen that no Japanese proletarian Marxist will appear; instead, Japan may ultimately produce a composite program which will reinterpret the Japanese concept of the well-being of the "Japanese family," meaning the Japanese people, in such terms as shall meet the needs of Japan's changing civilization.

## CHAPTER VI

SEPTEMBER 18, 1931

WHAT happened on the South Manchuria Railway embankment on the night of September 18, 1931, may never be known. The *New York Times* of September 19 carried the following headlines: "Japanese seize Mukden. Tokyo alleges attack. But Chinese say assault was unprovoked and unanswered." On the same evening the *Christian Science Monitor* announced that Japanese troops had seized the walled city of Mukden, the capital of Manchuria, after a clash with Chinese soldiers.

Peitayang, a suburb of Mukden, was the scene of the principal fighting. A Japanese War Department communiqué here [Tokyo] said the fighting started when Chinese troops attempted to destroy the bridge of the South Manchuria railway there.

A cable to the *New York Times* the following day, said:

With swiftness and thoroughness the Japanese troops in Manchuria, within the space of a few hours, have seized a half dozen strategic points, occupied the Mukden area, including the arsenal and barracks, seized communications, cutting Mukden off from the world, and are continuing to disarm Chinese troops all over Southern Manchuria as far as Changchun with a minimum of casualties.

In the present discussion the details of the episode do not matter; instead, what does matter is that the moment military action began, at that moment all control of the Military by the Civil Government ceased. The Military under the Emperor became the sole judge of the necessity for further action.

This is an amazing picture in view of the preceding narrative, which has indicated that parliamentary government in Japan has been developing steadily, and that parallel to that development there has grown up a very general advocacy of peace and coöperation in international affairs. The rejection of war as an instrument of national policy appeared to be within the range of possibility. Moreover, the American press on Sep-

tember 18 carried a summary of a study made at the invitation of the Japanese Minister of Finance, Mr. Inouye, with the co-operation of the economic research department of the Bank of Japan. The summary, made by Dr. Harold G. Moulton of the Brookings Institute, asserted that

military retrenchment, continuation of peaceful relations with the United States, and sharp restriction of the present rates of population are all essential if serious economic and financial difficulties in Japan are to be averted. . . . In the light of this analysis of the budget situation, it is easy to understand why the present [Minseito] administration is so insistent upon further reductions of military expenditures. It is this situation which rendered acceptance by Japan of the London Naval agreement a vital necessity. . . . A balanced budget and tax reduction can be accomplished only if military outlays are curtailed.

On the same date, however, the *New York Times* reported that

on the night of September 15, when General Honjo—the new commander of the Japanese garrison in Manchuria—arrived, orders were issued to all Japanese troops in Manchuria. The test was carried out satisfactorily and the next morning troops began their march. General Honjo, who has been touring Manchuria, addressed the troops in several places on the great increase in banditry and ordered them to take drastic measures against bandits found in the South Manchuria railway zone.

In view of these contrasting reports, the military demonstration of September 18 will remain a date that, in the history of Japan, will mark a crisis in her national policy, her foreign policy, and her constitutional development. It may even prove to be a date of disastrous import or constructive consequence in the history of the international polity of the world in general.

Thinking historically we must try to find explanations.

Even casual recollection will immediately remind us that Japan has her Military and militarists just as the United States has her Navy League and "America First" partisans. Yet there is an obvious difference: our Navy League is a voluntary association, their Military is a department of government.

Furthermore, it should be remembered that Japanese consti-

tutional government when created was not as strongly a civil government as that of the young United States when its constitution was adopted. Japan was just deserting a feudal organization of society when she essayed a constitutional government. On the other hand, when the United States became a republic, she declared her independence of a constitutional society that had been evolving for more than a century, and which itself was well protected from military interference in affairs of state. Moreover, the disciplinary measures of the British Government, administered through the troops quartered in the colonies, put determination into the hearts of Americans to be free forever from military interference in civil government.

In modern Japan, according to the policy of the Meiji Era, the young national army and navy, differing from the feudal armies of old Japan, had been developed to be like what they believed was the best in Europe. German officers had been imported to train the Japanese army. British officers had come to instruct the navy. Definite influences of pre-war methods and ideas still survive in the Japanese army and General Staff. This is but natural. Moreover, the Military have been allied with those "clansmen" and conservatives who have not been committed to the complete dominance of parliamentary rule. A new generation, trained in new ideas, must come to place and power before the temper of the Japanese Military can be materially changed.

These factors were handicaps to the success of such conciliatory policies in international affairs as were undertaken by Baron Shidehara. Yet, since the policy of the Government had recently been openly committed to a conciliatory program, the militarists were inevitably alarmed for their own importance in the scheme of things. The acceptance of the Paris Pact and the London Naval Treaty had lessened the prestige of the militarists, and the approaching General Disarmament Conference in Geneva appeared to them to further threaten their influence. Moreover, if what was believed in, and hoped for, in Manchuria could have been attained readily by conciliatory policies, the Military might have continued to become less and less important to the popular mind. Confidence in the newer techniques

of modern international policy was developing and might have won—except for their seeming failure in Manchuria.

In spite of the excellence of Baron Shidehara's leadership, doubt was accumulating during the summer of 1931 concerning the wisdom of his policy. His opponents enumerated his mistakes, beginning with the "grand gesture" in 1925 when, in order to get the good will of China, Baron Shidehara's appointee at Peking advocated tariff autonomy for China. Riots between Chinese and Japanese, between Chinese and Chosenese over land and irrigation in Manchuria, and disturbances over fishing rights off the Shantung Peninsula, gave critics a basis for complaint that the gentleness and reasonableness of the Foreign Minister's policy only encouraged the Chinese to take advantages which they would not have attempted under a firmer administration. They failed to realize that changes were taking place in China itself, that developing governmental and economic policies more than the gentle methods of Baron Shidehara could account for the aggressive program on the part of the Chinese; perhaps he understood the temper of the changing Chinese better than his opponents, who were considering their own immediate objectives. The most energetic advocates of maintaining order with a strong arm were naturally those connected with the railway and other enterprises in Manchuria. They explained again and again that Japan must have raw materials from Manchuria for her industry, that the "maintenance of law and order" there is vital to Japanese economic necessities. The peace that was necessary, they insisted, could be obtained only by a strong and not a conciliatory policy. They forgot that the strong policy of the Tanaka ministry ended in a boycott which injured Japanese trade in South China and affected a larger proportion of Japanese business and industry than do riots on the frontier in Manchuria. These champions of peace and order in Manchuria, however, feared what would happen to their special interests, strategic as well as economic, in that region, if riots should become widespread. Moreover, many of the Japanese who normally would have preferred the continuance of a conciliatory policy on principle, or because of special interests in South China, were captivated by the mili-

tary episode of September 18. The strong-arm party had strength out of proportion to the trade balance because they could play on the emotional, patriotic feeling that the multitude without any vested interests have for Manchuria. Manchuria really is, for the immediate present, not only the crux of Japanese foreign policy, but the direction of that policy has become a test of the relative place of the civil and the military within the structure of government.

Apologists for military action in Manchuria who profess to believe in the dominance of the Civil Government have explained that the general discontent in the country among graduates of high schools and universities due to unemployment, and discontent among wage earners which necessitated surveillance, were diverted temporarily by the military adventure. In addition the Seiyukai party naturally championed a cause that would discredit the Minseito policy. Moreover, it was argued that Japanese policies had shown no convincing leadership and no goal clearly defined as an immediate remedy for the pressing budgetary problems or for the industrial depression which Japan was facing. The military *coup d'état* diverted attention and offered an immediate goal.<sup>1</sup>

Forceful intervention in this Manchurian crisis of 1931, however, was interpreted not as war but as a change from a passive to an actively defensive policy, one compared to the sending of troops by the United States, Great Britain, and France to protect the foreign settlements of Shanghai after the student strike and consequent riots in 1925. Japan was resorting to a positive use of force as did Russia in 1929 when the Chinese infringed what the Russians conceived to be their rights in the Chinese Eastern Railway in North Manchuria. Men of middle age, who had been occupied with advancing Japanese interests in Manchuria, had personal patriotic associations with the winning of the outposts for economic expansion so essential to the Island Empire. Realizing its strategic importance, and fearing the indifference of the younger generation to it all, these men, re-

1. The scientific approach to the problem illustrated by the Brookings Institute Report (see above, p. 206) indicates, however, that Finance Minister Inouye and the Minseito Cabinet had an objective and a policy. Perhaps its quiet, constructive character left it little known and unappreciated.

sponsible for Japanese investments in Manchuria, were impatient with the conciliatory policies of the Minseito government. To these men, in the main old-style imperialists and militarists, something more positive seemed absolutely necessary.

Following upon the event of September 18 and without any change in the personnel of government, the change to an active policy came about. Who was responsible? Was it the Military alone? Was it the Military supported by those opposed to the growing power of the Civil Government and newer ideas for international policy? Or was there some motive perceivable only to those who know the intricacies of Japanese purposes? Theoretically the South Manchuria Railway has no power to determine government policy. Is it possible that its desires and purposes, well known to the Military, furnished justification for action which might strengthen the Military in popular favor? The policy of Count Uchida is yet to be evaluated. Whether he has been interested in the setting up of autonomous units, "committees of public safety," which were reported in the American press, is a matter which some historian of this crisis may ascertain.<sup>2</sup> These remind one of somewhat similar tactics by which the British East India Company in the late eighteenth century assisted in the stabilization of provincial governments in India and in increasing the prosperity of those regions under their protection. It will be very difficult to allocate responsibility in Manchuria since the Minister of Foreign Affairs, the Minister of War, the President of the South Manchuria Railway, the Governor of the Kwantung Province, and the Commander in Chief of the Kwantung garrison—who controls the military policy throughout the railway zone—all have responsibility for the security and prosperity of Japanese interests throughout the region.

As to the Military itself, which dominated the situation, possibly it hoped to regain its threatened position in popular favor and in constitutional government by some opportune *coup d'état*. September 18, 1931, may prove to be this coup; it may,

2. The proclamation of an autonomous Manchuria, including Jehol (the eastern province of Inner Mongolia), was reported while this volume was in press. See the *New York Times*, February 19, 1932.

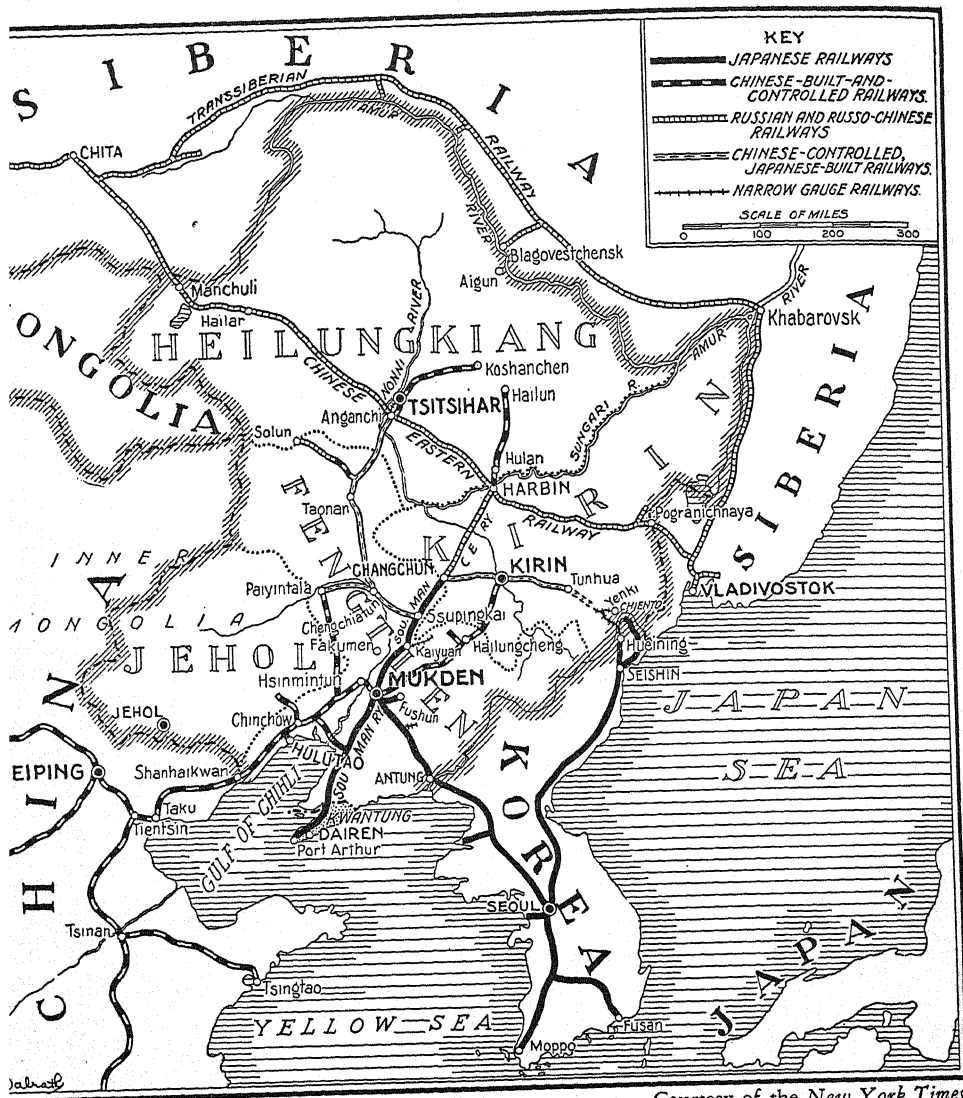
on the other hand, remain only an episode, a positive phase of Japan's protective police power. This last, at any rate, was the interpretation put upon it by the Wakatsuki government, which endeavored to direct the negotiations defining the Japanese position and policy. From our present perspective, however, the move of the Military has appeared to be quite as threatening to developing constitutional government in Japan as it was upsetting to developing international policies directed toward that peaceful adjustment of international differences which was to eliminate war as the instrument of national policy.

What was the *impasse* in Manchuria which gave the occasion for the multiform catastrophe?<sup>3</sup> Is it possible to view it objectively, fairly to both the Chinese and the Japanese? Is it possible to define principles or formulate a hypothetical but workable policy?

The Japanese and Chinese were both discontented with the *status quo*. The Japanese have since explained that money due on loans for building Chinese railways in Manchuria was not paid, but was diverted to the building of competing roads, that the surplus revenues of the Peiping-Mukden Railway, which were to be reserved for the payment of British loans, had been granted to a Dutch contractor for the construction of a port at Hulutao which was to divert business from the Japanese port at Dairen. If this plan should function successfully, and if the Chinese, the principal inhabitants of Manchuria, were to divert their business to the Chinese system, then the vast investments of the Japanese, guaranteed under their treaty rights, might be threatened with bankruptcy. Chinese obligations for loans already made for the building of the existing railroads must, therefore, be paid; the building of competing lines with the money owed by them must cease. But diplomatic negotiations to that end had seemed to be useless, for Baron Shidehara's communications were not even answered.

According to the original Sino-Japanese Treaty of 1905, the term of lease for the Antung-Mukden line was to have expired

3. K. K. Kawakami and Shu-hsi Hsu, in "Manchurian Backgrounds," published in *Pacific Affairs*, February, 1932, give a remarkable picture of the divergence and irreconcilable character of Japanese and Chinese points of view.



Courtesy of the New York Times.

## RAILWAYS OF MANCHURIA

[The Manchuria Year Book 1931, at the end, has an interesting map containing the proposed railways, which make a network of lines within the Eastern Provinces of Kirin and Fengtien (Liaoning), and Jehol of Inner Mongolia. The projected roads also extend across Heilungkiang Province, in three places, to the Amur River.]

in 1924. In 1915 this term was extended to 2007. Moreover, the lease of Kwantung, which was ceded to Japan by Russia, was to have expired in 1923. By the 1915 agreement the time was extended to 1997. In the third place, the lease of the Dairen-Changchun line, transferred by Russia to Japan with Chinese consent in 1905, was to run until 1983 with purchase rights after 1938. By the 1915 agreement the term was extended to 2002 without purchase rights until that date.<sup>4</sup> To the Japanese, treaties are treaties, and they declare that it is impossible to persuade Japan to relinquish the railway or the leased territory except on the terms of the 1915 treaties. Moreover, the Japanese have already invested ¥1,500,000,000 or more, \$750,000,000 in American money, in this disputed area.<sup>5</sup> The Chinese contention is that the treaties granting the Japanese privileges in Manchuria are the treaties of 1905, two of which have expired (1923 and 1924), and that the treaties the Japanese are insisting upon are the Twenty-one Demands (already referred to on p. 159) imposed upon a weak China in 1915. The Demands were made in spite of the fact that China as well as Japan was on the side of the Allies in the World War. In modified form they were agreed to as the "Treaties of 1915" by Yüan Shih-k'ai, willing to try to bid for support for his own imperial ambition in Peking.<sup>6</sup> These 1915 treaties and agreements, the Chinese hold, were "treaties under duress" agreed to in unconstitutional procedure and therefore of no effect; China, therefore, should pay no obligations. Since the Japanese did not relinquish their leasehold, and are retaining the Dairen-Changchun line without purchase privilege until 2002, the Chinese have built a parallel system of their own. From the Japanese it was learned that C. T. Wang, when Foreign Minister, informed Chargé d'Affaires Shigemitsu at Nanking that before conceding freedom of residence throughout Manchuria as a

4. All these treaties are in MacMurray, *op. cit.*, I, 523, 549, 627; II, 1232.

5. These totals are variously estimated. ¥2,147,000,000 is the estimate given by K. K. Kawakami, *op. cit.*, p. 114. The essential facts, however, are not the amounts but the principles involved.

6. For an excellent discussion of the merits of the case, see T. A. Bisson, "The Basic Treaty Issues between China and Japan in Manchuria," *Foreign Policy Report*, Vol. VII, No. 21 (December 23, 1931), pp. 383-384.

concomitant to the abolition of extraterritorial privileges, China would require the retrocession of Dairen and Port Arthur.<sup>7</sup> Such retrocession Japan flatly refused for any consideration whatsoever. Upon this point the irrevocable decision of Japan was made a matter of record in the *Proceedings of the Washington Conference, 1922*.<sup>8</sup>

Here is the *impasse*: the demand for the abolition of extra-territoriality and the rendition of concession areas, which are the chosen objectives of the Chinese National Government, and the refusal of Japan to accede to this demand.

Concerning the building of parallel lines, the Japanese have contended that there were provisions (secret protocols) which prohibited the building of lines parallel to the Japanese road.<sup>9</sup> But how wide a belt should that cover on either side of the South Manchuria Railway? In a general way the Japanese have taken the position that it might apply as far as one hundred miles each side of their line. A hundred miles on either side of the railway is not too far for ox carts to travel across frozen ground in winter. Products near-by could be shipped to Dairen or other Japanese ports early in the autumn, produce from remoter regions could be transported in the winter, and thus the railway would have continuous employment. Therefore, any new lines nearer than two hundred miles on each side of the South Manchuria Railway would be competition in violation of treaty rights which forbade the building of parallel, competing lines. This claim of a two-hundred-mile belt must be regarded as an extreme statement of Japanese demands. The most recent definition of Japanese policy in the matter, one of December, 1930, appeared to be somewhat different; the Japanese seemed

7. *New York Times*, special cable from Tokyo, October 25, 1931.

8. P. 1070.

9. The summary of the text of the "secret protocol" to the Sino-Japanese Treaty of December 22, 1905, reads as follows (it is from Article III):

"The Chinese Government engage, for the purpose of protecting the interest of the South Manchuria railway, not to construct, prior to the recovery by them of the said railway, any line in the neighborhood of and parallel to that railway, or any branch line which might be prejudicial to the interest of the above-mentioned railway" (MacMurray, *Treaties*, I, 554).

The merits of the "secret protocols" forbidding the Chinese to build parallel lines, and the reported Japanese decision of December, 1930, are discussed in the *Foreign Policy Report* for December 23, 1931, p. 394.

to have dropped the prohibition of parallel lines so long as the Chinese lines should not strangle the South Manchuria Railway.<sup>10</sup>

In answer to the arguments of the Japanese against the development by the Chinese of their own transportation system, the Chinese have explained that Hulutao, the new Chinese port, is one hundred miles nearer Mukden than Dairen, that Hulutao would also be nearer to the regions to the west and north of it, and therefore the building of the line from Hulutao to the interior would lessen freight charges to the Chinese raising produce in that area. Fifty miles or thereabouts is far enough to cart produce for transportation by railway.

I was informed in Mukden that the development of Hulutao involved a further difficulty with reference to goods entering that port. Being a Chinese port, it was stated to me that the port officials permitted the entry of goods in such a way as to make it advantageous to use it. It must be remembered, moreover, that the customhouse in Dairen is Chinese. Until recently the import duty paid at Dairen for Chinese merchandise shipped from a Chinese treaty port was refunded by drawbacks according to treaty stipulations.<sup>11</sup> On the first of April, 1931, the Chinese Maritime Customs at Dairen abolished the drawback, thus leaving Dairen at a further disadvantage as compared with Hulutao.

On the Chinese side complaint is made that transportation of goods for the Chinese *via* the South Manchuria Railway has frequently been delayed, and that in the case of machinery, when it did arrive some essential part would in all probability be missing. Whether such accusations are justified or not is beside the point; they illustrate the attitude of the Chinese toward methods of the Japanese, whose prosperity, prestige, and power in Manchuria have been all too obvious.

The Chinese, furthermore, have been resentful of supervision by the Japanese police in "leased areas," especially Kwantung,

10. *New York Times*, December 10, 1930.

11. "On being imported to Dairen such merchandise shall pay no duty, so long as it does not pass the Japanese frontier into the interior of China." Article IX of Agreement regarding Establishment of Maritime Customs office at Dairen, May, 1907. MacMurray, *op. cit.*, I, 636.

because they considered that the leases were but temporary and the sovereignty Chinese; they resented being asked why they came into Dairen, for example, how much money they had, how long they were going to stay, why they brought their families, or why they did not. They resented the frequent and annoying repetition of this throughout their residence there. The Japanese, on the other hand, hold Kwantung for the time being in complete sovereignty, which they claim was transferred to them from Russia in 1905. Russia had by Sino-Russian lease convention "the entire military command of the land and naval forces and equally the supreme civil administration."<sup>12</sup> Extraterritorial rights are enjoyed by no one in the Kwantung area; the Japanese exercise complete judicial authority over the Chinese, Japanese, and foreigners. "The reservation of sovereignty by the Chinese Government over the leased territory means, in fact, nothing further than the ultimate right to recover the territory at the expiration of the lease."<sup>13</sup>

The Chinese have also objected to the colonizing of Chosenese upon Manchurian soil, because these units are under Japanese consular jurisdiction and supervision, instead of under the administration of the Chinese provincial government. In reality new extraterritorial units are being created. The Japanese, of course, argue that Japanese subjects must have schools, hospitals, and police protection, that if no adequate provision for these is made locally, it is necessary to make special provision. The Japanese have also protested against Chinese efforts to restrict Japanese holdings and settlements through an obstructionist policy which prohibited the lease of land to any Japanese in South Manchuria; they have maintained that the privilege of lease for settlement and industry was included in the Treaties of 1915. During 1931 Japan protested against "pogroms against Korean settlers."

Another mooted question between the government in Manchuria and the South Manchuria Railway has concerned a short-line railway, the extension of the Changchun-Kirin branch to

12. MacMurray, *op. cit.*, I, 120.

13. Bisson, "The Basic Treaty Issues between China and Japan in Manchuria" (*Foreign Policy Association Reports*, Vol. VII, No. 21 [December 23, 1931], pp. 384-385), discusses in detail "The Kwantung Leased Area."

the border of Chosen at Hueining, which is sometimes spoken of as the projected Kirin-Hueining Railway. This line will give the agricultural and forestry products of eastern Manchuria a sea outlet at the Chosen port of Seishin which the Japanese are planning to develop. Seishin can be linked with the Japanese port of Tsuruga across the Japanese sea. The new line of railway running east and west at right angles from the South Manchuria road at Changchun would make a new trade route between Japan and the Manchurian interior which would be shorter than those now in existence, except the Chinese lines to Hulutao; it would make the food and raw materials of eastern Manchuria easier of access to the Japanese market, and that at lower freight charges. Furthermore, it might be possible *via* Changchun, Ssuningkai, and the terminal Paiyintala, or branch lines therefrom, to draw produce from the province of Jehol, which is part of Inner Mongolia; it might also be possible to draw produce from the province of Heilungkiang through Anganchi and Tsitsihar to the Kirin-Hueining line *via* the Changchun-Ssuningkai junctions. The Japanese would like to construct a straight line from Changchun to Chenchiatun, thus cutting off the apex of the triangle *via* Ssuningkai. It is reported that in the neighborhood of the province of Kirin to be covered by this projected line there are mineral resources including shale from which the Japanese believe they can extract oil. The line according to the Japanese plan is to be built with Japanese loans, and owned and operated by the Japanese Government. A bankers' syndicate, comprising the Industrial Bank, the Bank of Chosen, and the Bank of Formosa—banks subsidiary to the Japanese Government—had by 1918 advanced ¥10,000,000 on this project (this was for the Kirin-Hueining section), which the Chinese have blocked by refusing permission to construct the connecting link from Tunhua to Hueining on the Chosen border. As at present arranged, produce from the province of Kirin and the region to the west of the Changchun-Mukden line can go *via* Hulutao, when it is completed, or *via* Dairen, or Antung and the Chosen port of Fusan, much longer distances than that proposed by this new road.

There is another advantage to Japan from the construction

of the direct short line of railway through the Kirin Province to the center of the region—the Fengtien Province—and beyond to Inner Mongolia (Jehol) and the Heilungkiang Province across the Chinese Eastern Railway (spoken of as the Russian sphere of interest):<sup>14</sup> a short line from the coast at Seishin *via* Kirin to Changchun and directly on to Chenchiatun and Paiyintala or Anganchi would have the strategic military advantage of being parallel to the Chinese Eastern Railway in case Japan should in the future have occasion to contend for place and power with Russia, whose line of advance or defense would inevitably be the Chinese Eastern Railway.

As the Chinese have chosen to ignore the treaties and their obligations under them, the Japanese have become more and more insistent upon the letter of the law. They have included also the fulfilment of other pledges which were made by Chang Tso-lin, such as the right to build the Changchun-Kirin Railway to the Chosen border.

Beyond all this there is still another difficulty, more serious and more fundamental, if that is possible. Due to the weakness or character of the Manchurian government there has not always been adequate policing of the region; like the rest of China, Manchuria is sometimes subject to banditry. Indeed, the greatest of the bandits, it will be remembered, was Chang Tso-lin who became the military governor of Manchuria.<sup>15</sup> In spite of his power and that of his son Chang Hsueh-liang, banditry has reappeared from time to time. Sometimes it takes the form of hostility of rival military generals, representing diverse political factions who are struggling for place and power. The autumn of 1931 saw such factions, as champions of the Cantonese against the Nanking governments. General Ma Chan-shan of Heilungkiang Province, supporter of Chang Hsueh-liang, and General Chang Hai-peng, his opponent, have added confusion to the 1931 military crisis.

14. See Count Carlo Sforza, *European Dictatorships*, chap. xi, entitled "Soviet Imperialism."

15. His son gave \$9,000,000 from his father's estate for the building and endowment of the Northeastern University, whose curriculum and whose plant, including a fine stadium, a school of engineering—which they call a factory—as well as schools of literature, political science, and law, are modeled along American lines and are staffed by American-trained Chinese.

Against this chaos of banditry and rival military factions the Japanese insisted they must guard their property, their citizens, and their railroad. Peace and order they must have for the best returns from their investments; and peace and order they would have by the aid of their military police, which according to the treaty may be increased in emergency to 15,000 soldiers. To this end their railway was adequately protected by guardhouses at the western end of every east and west line of road, and at the southern end of every line going north and south. In the interest of law and order they claimed to have intervened, September 18, because tracks of the South Manchuria Railway had been torn up. For the repairing of bridges and the opening of transportation, General Honjo has exercised military discipline even across the Chinese Eastern Railway to Tsitsihar, the capital of Heilungkiang Province. When finally in control of the capitals of the Three Eastern Provinces—Mukden, Kirin, and Tsitsihar—the Japanese were assured of the policing of the railway system.

From the Chinese point of view that policing of the so-called railway zone has been an affront to their sovereignty. They have long argued that if the Japanese do not aspire to territorial or political control of Manchuria there has been no need of so great a military force nor of such vigilant activity as the Japanese have exercised. Furthermore, the extension of territorial holdings by the Japanese has been an occasion for Chinese protest. That extension of the railway zone so that it includes wide areas comprising municipalities in Mukden, Antung, and Yingkou has been achieved by various methods, not all of which are within the strictest letter of the law, but which have arisen out of the "exigencies of the situation."<sup>16</sup> The Chinese in Mukden, for example, are resentful of the mining rights exercised by the Japanese in Fushun, which is near-by. Here "questionable land titles gave rise to controversy only partially settled through bilateral Sino-Japanese agreements in 1909 and 1911," although since acquiesced in by China. In this case also, the original in-

16. It is in such matters as are here suggested that the Japanese find reasons for not desiring to submit the interpretation of treaty rights to the World Court.

tent of the Sino-Russian agreements of 1896 and 1898, which did not contemplate the large-scale exploitation of the mines for export, has been clearly altered by subsequent practice. A considerable area at Fushun is now under municipal administration established by the South Manchuria Railway. Still "further conflict was caused by lands taken over for 'military use' during or after the Russo-Japanese war by the Japanese military. While such seizures may have been justified or full compensation rendered in some cases, in other cases this action is judged by a recent investigator to have been 'entirely unreasonable and without compensation.'"<sup>17</sup>

Incidents of friction and diverse points of view could be multiplied, yet these suffice to illustrate the state of affairs. Injustice and unfair advantage can be found on both sides. Yet to combat chaos as well as to secure their treaty rights and to end Chinese sabotage and undermining railway competition, the Japanese have precipitated a military intervention, as destructive of the established order and of the business and commerce of other nationals as was the disorder incident to the inefficient government of Chang Hsueh-liang. In one instance the chaos was due to weak government; in the other to a strong, uncontrolled military government. The divergence lies in the character of the militarism: the one, that of military under rival leaders, not integrated to support a national policy; the other a military directed by a staff whose purpose is to serve interests, economic and political, which they conceive to be essential to the welfare of their nation.

Had the Japanese explained to the world the grievances they were experiencing, especially the nonpayment of interest on loans, and the diversion of said funds to new undertakings, had they informed the League that they had attempted to arrive at an understanding through the conciliatory diplomatic efforts of Baron Shidehara, and that they could get nowhere because all communications were ignored, it is reasonable to suppose that the capitalistic nations would have sympathized with Japan.

17. *Foreign Policy Reports*, Vol. VII, No. 21 (December 23, 1931), pp. 387-390, has an extensive analysis of the methods by which the "railway zone" has been steadily acquired. The investigation quoted is Young, *Japanese Jurisdiction in the South Manchuria Railway Areas*, p. 151.

Had she then said that if no adjustment of the matter was made she must step in and take control of the collection of her debts, it would have sounded familiar. Had Baron Shidehara been allowed to carry out his conciliatory program, something similar or something more effective might have been devised.

Instead, the armies both of China and Japan intervened. In Japan, as soon as the army acted, the whole matter was taken out of the hands of the Foreign Office: the army became the judge of its own further action, and was in control of the Japanese policy in Manchuria. According to the Japanese constitution, the understanding is that as soon as there is military action, immediately the commander in the field and the heads of the General Staff have full discretion in regard to further action. This was intended to prevent interference in military affairs by politicians. In actual fact it leaves the army free from control by the Civil Government. When the constitution was formulated, the military side of the Government, which is responsible to the Emperor, was assumed to be non-political and for the protection of the nation in time of need. But in 1931 the acceptance of the London Naval Treaty and the declared peaceful policy of the Minseito Cabinet, as well as the episode of 1919,<sup>18</sup> were resulting in the treatment of the Military as part of the Civil Government, subordinate to national policy. The military coup of September 18, 1931, proved the contrary: it appeared to be rebellion against the preëminence of Civil Government within the constitutional government of Japan. Apologists, professed believers in parliamentary government, have explained that exceptional conditions in Manchuria make it neither—that it was an emergency measure. Nevertheless, the present independent action of the army opens the constitutional question of the dominance of the Civil Government in the developing parliamentary system of Japan. The crisis for Japan is a very serious one.

The situation in 1931 was opportune for the provocations in Manchuria seemed to be very great. Chinese determination to eliminate foreign privilege in China took the form of nibbling away by competition, by restriction of privilege, refusal of

18. See above, pp. 179-180.

grants, and repeated minor conflicts of residents over irrigation or land rights, and the like. The nations of the world were absorbed in other matters; a military success six months before the Disarmament Conference might discredit the Minseito party, which was committed to the limitation of armaments. Perhaps in a crisis a majority of the people, enfranchised in 1925, might still have as much faith in the judgment of the Military as in that of Parliament and Cabinet. This might be especially true in relation to Japanese rights in Manchuria, for, as already indicated, these rights have long been identified with Japanese security, prosperity, and patriotism.

In such a situation in England the Government would have resigned. The Japanese did not. The Wakatsuki government, whose policy was quite the opposite and whose authority had been defied, remained in power. (The fact is, resignation would have been useless, since the Minister of War would have remained and his policy would have continued.) Instead, there was a slight modification of policy to fit the exigencies of the situation: treaty rights remained the basic principle, the method of enforcement was changed temporarily. The Minseito party remained in control; the Seiyukai party, habitually sympathetic to the militarists, remained the opposition party in the House of Representatives. Meanwhile, Mr. Yoshizawa, who is the son-in-law of Mr. Inukai, the leader of the Seiyukai, was acting as official representative of Japan at the League's Council in Paris.

Recently and unofficially the Japanese have said that their action in Manchuria has only paralleled similar action by the United States in regions adjacent.

Japanese leaders in Manchuria are now united in maintaining the position that it is essential that Manchuria be made what it should be, namely, a land of peace and plenty. They are openly desirous of sympathetic understanding on the part of the American public, comparing Japan's present expeditionary incursion into Chinese territories with the frequent dispatch of American forces to Cuba, Mexico, Nicaragua and Santo Domingo—expeditions undertaken less in a punitive spirit than with the intention of abating nuisances general to the neighborhood which might have become intolerable.<sup>19</sup>

19. Hallett Abend, *New York Times*, November 4, 1931.

Such explanation in the face of criticism of Japan for appearing to abandon her professed devotion to the principles of the League Covenant, is, in reality, but the reiteration of points of view we have already set forth.<sup>20</sup> Officially, however, the Wakatsuki government, though reported as surprised by the irresponsible action of the army, nevertheless refused proffered investigation, and resented demands made by the League Council for the immediate withdrawal of the troops to the railway zone in Manchuria. In theory the Japanese Government refused explanation, contending that it was not a matter of international concern but one of local adjustment between China and Japan.

In practice much information has sifted through; Baron Shidehara even spoke through the Associated Press in explanation of Japan's position in Manchuria since the Russo-Japanese War. He said that in 1915 Japan

did obtain some extension of her rights, in particular, the recognition of the right of her people to lease Manchurian land; and her civilizing efforts resulted in enormously increasing the prosperity and population of the country. Then came the intense campaign . . . for the repudiation of the so-called "unequal" treaties; and this meant the repudiation of Japanese treaties which had secured peace and order in Manchuria. . . .<sup>21</sup>

Thus he clearly associated the recent Manchurian affair, as we have done, with the wide Chinese program for the abolition of extraterritoriality.<sup>22</sup> In relation to the matter of sovereign government within the Three Eastern Provinces, Baron Shidehara continued,

20. Pp. 173-174.

21. *Christian Science Monitor*, November 23, 1931.

22. In this explanation Baron Shidehara discussed Manchuria *per se* without any mention of the precedent of intervention by the United States for the stabilizing of affairs in states to the south of her. In fact Secretary Stimson's non-intervention policy defined (April, 1931) in relation to Nicaragua no longer furnished precedent for vigorous "protection of life and property" within another sovereign state. On April 16, 1931, he telegraphed representatives in Nicaragua: "In view of the outbreak of banditry in portions of Nicaragua hitherto free from such violence, you will advise American citizens that the Government cannot undertake general protection of Americans throughout that country with American forces. . . . The Department recommends to all Americans who do not feel secure under protection afforded them by the Nicaraguan Government through the Nicaraguan National Guard to withdraw from the country, or at least to the coast towns whence they can be protected or evacuated in case of necessity. Those who remain do so at their own risk. . . ."

the former Chinese officials fled upon the approach of our forces and left the unfortunate country largely destitute of constituted authorities. Some substitution had to be improvised and this was spontaneously done by the local population, of course with the countenance of our troops . . . Japan regards it as entirely a matter for the Manchurian people themselves and is affording no encouragement or stimulus to such a development.

The Japanese had one experience of trying to sponsor a Chinese government: that was in the case of the last successor to Yüan Shih-k'ai in Peking, Tuan Chi-jui, the provisional chief executive of China, 1924-25.<sup>23</sup> This proved to be such an expense and failure that the Japanese have said they will not try anything of the kind again. Nevertheless, they do say they will not permit Chang Hsueh-liang to return to Manchuria, nor will they tolerate the undermining of their policies as practiced under appointees of Chang Hsueh-liang. This they are resolved upon even though it may seem to violate "the administrative integrity" of China.<sup>24</sup>

The Japanese are proud; they are tenacious of rights and privileges as they see them. They have insisted that interference by the League Council casts suspicion on their honor, that the insistence that withdrawal of troops precede negotiations puts them in the wrong, which they will not acknowledge. In acting so, however, they seem to forget that the Chinese are sure to interpret this high sense of honor as a useful pretext for what is so often done under the guise of honor, but which proves to be aggression; from China's side Japanese pride, which would protect honor, looks like imperialism on the defensive.

The question of the validity of the treaties is one which might rightfully be made the concern of the League of Nations; the interpretation of rights under a treaty could be a matter for judicial opinion by the Permanent Court of International Justice at The Hague. Japan could have disarmed suspicion of her motives and fear of her actions by presenting either matter for adjudication. This policy was sincerely advocated by many lib-

23. Tuan Chi-jui had probably been "pro-Japanese" since 1917. See Kenneth Scott Latourette, *The Development of China*, pp. 229, 248.

24. Nine Power Treaty, Article I, *Conference on the Limitation of Armament, Washington, 1922, Proceedings*, p. 1621; also see above, pp. 162-163.

erals before the recent crisis over those treaties. But the Army, not completely controlled by the Civil Government, acted. The Chinese seized the opportunity to present their cause to the League of Nations. The pride and patriotic emotions of the Japanese people were so stirred, the constitutional significance of the military coup was so serious, that the Civil Government accepted the responsibility and carried on the diplomatic correspondence in a matter which was not of its creation.

In reality, the whole Manchurian question is but the concentration in one area of all the issues involved in the preceding discussion—"unequal treaties," Chinese sovereignty, extraterritorial rights and privileges, the existence of foreign business in China, and Chinese competition with foreign privileged interests. Yet it is even more, it is all that on the frontier of Soviet Russia; it is a conflict of the Chinese, whose nation is in revolution, with a capitalistic nation whose "imperialism" seems in essence to be all that China has been struggling against for more than a generation.

Up to the taking of Tsitsihar by the Japanese, there may have been an understanding between Russia and Japan; perhaps Russia was giving a *quid pro quo* for the hands-off policy of Japan in 1929 when the former, by military demonstration, insisted upon her rights in the Chinese Eastern Railway. In spite of non-interference by the Russians, the situation has had grave possibilities. Uncertainty is not at an end. But Walter Duranty's reports of Russia's position as recorded in its press—whose function it is to direct public opinion and public action—may be a reliable guide for us. Mr. Duranty has reported that the Soviet version is

that Washington is acting under pressure of influential banking and industrial circles who hope to kill three birds with one stone: end the depression by selling their surplus of raw materials and manufacture to the warring states, smash the Soviet Five Year Plan, and weaken Japan as a future rival of the United States for dominance of the Pacific.

The *Pravda*, having revealed the sinister plans of Secretary Stimson and the American kings of business, announced the Russian intention of frustrating such knavish tricks because "the Soviet will not be lured into a departure from its consistent

policy of peace, and calls on the workers of the world to judge between it and the capitalist firebugs.”<sup>25</sup> Moreover, on the same front page is the announcement of the signing of a parcel-post convention between the Soviet Union and Japan—a simple peaceful gesture.

The appeal to the League of Nations by the Chinese, in September, 1931, after the intervention by the Japanese for the preservation of what they conceived to be their treaty rights, was like calling in a health department to stop an epidemic of typhoid after a score have died of it. In such a case measures can be taken for the alleviation of the sick; but prevention of the recurrence or the spread of the disease is possible only through a scientific analysis of the causes. If the health officers whom the Chinese have called in do not make such analysis and succeed in stopping the epidemic immediately—if they do not act as the Chinese believe they should—will the Chinese appeal to another school of medicine? Will they, contrary to their own local ideas and principles, attempt to ally themselves with communism against what they may conceive of as another demonstration of the old imperialism which has threatened China for nearly a century? If they do, will Soviet Russia persist in her peaceful policy for the completion of the Five Year Plan?

Is it possible, in the end, to prevent Manchuria from becoming the “Balkans of Asia”?

25. *New York Times*, November 25, 1931.

## CHAPTER VII

### EVALUATION OF THE *STATUS QUO* IN RELATION TO MANCHURIA, JANUARY 1, 1932<sup>1</sup>

WHEN we look back over recent events, and try to anticipate the judgments of history, it would seem that the larger issues of the Manchurian question are not those of an external struggle between army factions and bandits of China on the one hand, and the defensive power of Japan concentrated in its army in Manchuria on the other. Instead, it is a test of far-reaching trends within the structure of both countries. The real issue goes deeper than that with which diplomats are dealing: It is a question as to whether China and Japan will be able in the hour of crisis to use the machinery of government, including that which they borrowed from the West in a way to insure its future validity, or whether the urge toward militarism on the one hand and irresponsible nationalism on the other will set going forces of disruption as much within the state as in international affairs.

Four facts offered themselves for serious consideration at the end of 1931; they appeared to be definitive factors in the situation. First in importance—because it attempted to define a new phase of the situation in Manchuria, and because it is a product of the newly constructed machinery for the maintenance of international peace—was the resolution of the Council of the League of Nations of December 10, 1931, that China and Japan “undertake to adopt all measures necessary to avoid any further aggravation of the situation and to refrain from any initiative which may lead to further fighting and loss of life.” Having invited the two parties and the other members of the Council to keep it informed as to the developments of the situation and to

1. This date is taken because, according to announcements of the Chinese Government throughout 1931, all “unequal” treaties should go by that date.

furnish information for their representatives on the spot, the resolution states:

Without prejudice to the carrying out of the above-mentioned measures, desiring in view of the special circumstances of the case to contribute toward a final and fundamental solution by the two governments of the questions at issue between them, the Council decides to appoint a commission of five members to study on the spot and to report to the Council on any circumstance which, affecting international relations, threatens to disturb peace between China and Japan or the good understanding between them upon which peace depends.<sup>2</sup>

Perhaps second in importance are the factional divisions within the Government of China. For a time student riots were effective against the Nanking Government and against the Kuomintang, which had tolerated the Japanese in Manchuria and accepted the terms of the Council's resolution. Student riots in China protesting their nation's humiliation are always disturbing to the maintenance of any concerted policy; moreover, students have strong communistic leanings and are, some claim, becoming better organized as time goes on. So-called communist governments exist in three provinces, Hupeh and Hunan in the interior, and Fukien on the eastern coast. Military generals have been reappearing as active provincial governors. The third factor is the ultimate political effect in Japan of the disaster to Japanese economic life that has been wrought by the Chinese boycott of Japanese goods. The fourth and by no means the least significant item has been the change of government in Japan—the imperial choice of a Seiyukai Cabinet, without relation to the Minseito majority existing in the House of Representatives.

An evaluation of any one of these facts is difficult. In truth the answer—the outcome of the Manchurian *impasse*—will for some time remain unknown, for it will rest upon the interrelationship of the factors just enumerated. The resolution of the Council of the League satisfied nobody. On the surface it seemed inadequate to the perplexing, threatening situation which still disturbs eastern Asia. Nevertheless, this action may prove to be a greater triumph than at first appeared. The fact that Dr. Sze and Mr. Yoshizawa, in the presence of ten other national representatives for days on end, should have discussed

2. Recorded in the *New York Times*, December 10, 1931.

with equanimity a crisis which they believed involved the very existence of their nations, is a fact deserving consideration; it merited more notice than was given to the mistakes that were made by everybody, inside the Council and out. The existence of a commission to which matters may be presented may in the end prove to be a *modus operandi* out of which some constructive machinery for permanent coöperation can be derived.<sup>3</sup> The character, and the will-to-understand, of the members of the commission will determine much. Success ought surely to attend experts who would honestly try to find out the facts and to arrive at a just and fair compromise, even if this should involve new forms and new bases for relationships. Failure must just as surely follow if the situation is measured by alien conditions, or by precedents of another time and circumstance. And, finally, the will-to-coöperate with the international body, both by China and Japan, must determine the success or failure of even a superwise commission.

The trends of political and economic life within each nation will ultimately determine the outcome in Manchuria.

Internal politics of China are beyond prognostication. The record stands that student demonstrations have been effective against any governmental policy they have attempted to block. The overthrow of Nanking, threatening to give Canton the control, did not solve the Chinese problems; communistic tendencies were unimpeded, perhaps they have been strengthened during the absence of strong leadership in Nanking. Since the Japanese were determined that the presence and influence of Chang Hsueh-liang should be withdrawn from Manchuria, the problem was a serious one for any Chinese government: defense of Chang increased danger from Japan; desertion of Chang developed factions within China itself. The Chinese Government seemed bound to lose whichever way it turned. Eugene Chen in the early summer had visited Tokyo; in September he was reported to have said that the position of the Japanese in Manchuria was an accomplished fact and must be recognized. In December he suggested the establishment of civil instead of military government in Manchuria.<sup>4</sup> The Cantonese have even

3. See p. 126, n. 9.

4. *The Christian Science Monitor*, September 19, 1931, carried an account of a

advocated a federation of the states of China; this arrangement might have been welcome to Japan, for a local provincial government in Manchuria would be easier to deal with than a distant centralized government in Nanking. Later in the winter, however, Cantonese leaders, officials in the Nanking Government—even Eugene Chen himself—became belligerent nationalists, opposed to the Japanese not only in Shanghai but in Manchuria as well. What politics and the political factions within China will do is something even their nearest neighbors, the Japanese, can never foretell. They undoubtedly hope for a policy less aggressive than that pursued by the Nanking Government under the presidency of Chiang Kai-shek. With what government will Japan or the commission appointed by the League ultimately negotiate?

The Chinese political revolution of the winter of 1931-32, was due; it was complicated and made more difficult of solution by the Japanese activities in Manchuria. Northern Chinese in particular were critical of the policies practiced by the Kuomintang. The non-Kuomintang factions were large, and have been more and more insistent upon being included in the government. The choice of a personnel was made difficult in the heat of the Japanese controversy because extremists—pro-Russians, or moderates called pro-Japanese—were mutually excluded; thus the Japanese crisis made a solution of party politics and political factions, which was delaying reconstruction in China, impossible of satisfactory conclusion.

The effect of the boycott, which in three months cut Japanese business with China to a third of what it was the year before (1930), and which tied up 60 per cent of Japanese shipping, may result in the industrialists bringing pressure for such modification of policy as shall satisfy the Chinese so that they will

visit to Tokyo of Eugene Chen, Foreign Minister of the Nanking rebel Government, which "has not been without its effect on the situation." The account explained, "it is considered that Mr. Chen had the following objects in view:

"To convince Japan that if the anti-Chiang Kai-shek movement is successful the new national regime in China will do its best to prevent boycotts against Japanese goods, agitation for the ousting of Japanese interests in Manchuria, agitation for the immediate return of concessions, and all anti-Japanese movements. . . .

"To assure Japan that anti-Chiang Kai-shek groups will favor a conciliatory

desist from further destruction of Japanese industry and trade. It may not prove to be possible to develop the economic resources of Manchuria fast enough to replace the loss of the South China market to Japanese trade and industry. In the autumn of 1931, it is true, the industrialists of Japan had evidently decided that there was enough hope for the future business life of Japan, if guaranties of noninterference with Japanese economic opportunity in Manchuria could be assured, for them to risk the crippling of business elsewhere in China. How long this opinion will hold will be determined by the situation as it develops. Japanese industrialists were undoubtedly influenced to this opinion because of the increase of import duties which China, now enjoying tariff autonomy, has been levying and is planning to levy. The hostility of the Chinese Government toward foreign investment in Chinese manufacturing enterprises may also have been a contributing factor.<sup>5</sup>

The fourth factor, the policy of the government in Japan itself is our original objective, the subject we have attempted to understand.

Does the appointment of the Seiyukai Cabinet mean the commitment of the national policy to the equivalent of a new feudal aristocracy?<sup>6</sup> Will this party ignore the democratic tend-

policy in Manchuria, probably placing the veteran Chinese administrator Yen Shi-shan in control of this area.

"A section of the military elements in Japan saw the most hope in Mr. Chen's statements that the anti-Chiang Kai-shek groups do not favor a highly centralized national government and will not attempt to eliminate the various war lords established in different parts of the Chinese domain.

"A loosely organized government in China, the militarists feel, would be much easier for Japan to deal with as she could make local arrangements with the Chinese leaders on the spot."

5. The special correspondent to the *New York Times*, May 28, 1931, reported: "Hereafter Chinese factories may not be sold to foreign investors, according to a circular issued yesterday at Nanking by the Ministry of Industry. It is announced that where factory owners are unwilling or financially unable to carry on operations, the central or local government will take over the plant, if it is one of any size, and convert it into a state enterprise. In the cases of smaller factories the government will make loans at a low rate of interest in order to tide them over their difficulties, and will appoint government supervisors to introduce scientific methods of management." This was a serious regulation in view of the fact that the Japanese were extending their control over Chinese factories through loans or management.

6. Dr. Nitobé, *Japan*, pp. 229-230, writes stirring paragraphs which indicate a real danger to Japan in the present political party feuds. He says: "If the distinguishing traits of the national psychology, as shown in the Great Reforms of

encies of developing parliamentary government, and will it desert a conciliatory policy? Will such tendencies become established, or will they be a matter of short duration? Is the inauguration of the Seiyukai Cabinet a desperate attempt to deal with Japanese economic problems by a strong policy suited to the purposes of the industrialists and welcomed by the surviving military clique? These industrialists would not only have guaranteed economic opportunity in Manchuria, they would also have the opportunity to compete successfully with the trade of Great Britain. For the assurance of this opportunity in the world's markets, the Seiyukai immediately put an embargo upon gold, thus causing Japan to depart from the gold standard.

The above questions time alone can answer finally, and yet they must be answered tentatively before we can get any real evaluation of the tendencies which we have presented at some length (chapters ii-v). In brief, are the evidences of growing democracy and interest in constructive, coöperative international policy, which we have described, a veneer?

This is the question we are inspired to try to answer because of the great strides that Japan has made in recent years. Changes in the content of education indicated that intelligence in matters of international relations had progressed far. Yet the older training in patriotism and loyalty, especially to the heroes

of our history, are (1) the stabilization of the royal authority, (2) the broadening of popular rights, (3) the introduction of foreign ideas, will the next Great Reform that people speak about—can the coming great movement—take a course utterly unlike that of its predecessors, and (1) lower the imperial prestige, (2) detrude popular rights, and (3) eschew exoticism? In other words are we approaching an age analogous to the Kamakura Shōgunal Period, when the Emperor was reverently excluded from the exercise of his power, and when the people were reduced to mere engines of drudgery, and when the nation received no impetus from abroad?

"The present is not altogether devoid of signs of reversion to an old political type. Party jealousies are not less bitter than during the Gen-Pei feuds. Unscrupulous Kiyomori may have his counterpart. The Communist peril has frightened the timid away from foreign influences in general. The nation is at the cross-roads of its destiny. Which way will it choose?

"This Empire of ours will be wiped off the political map of the world should a violent hand touch our ruling House. The history of this nation will lose all significance for mankind should its sons fail to continue in the march of Democracy. We shall sink into nonentity, should we, through self-complacency, cease to 'polish our native gems with stones quarried in other lands.'"

enshrined at Port Arthur, persisted along with the new ideas. When, in 1931, the struggle for livelihood was thought to necessitate a drastic policy in Manchuria, that policy appealed to the patriotic and self-preservation instincts because they were better developed than was the rational idealism which had been taught for less than a decade. Intelligent training of public opinion for the support of rational, forward-looking programs of national policy, which appeared to be a plant well acclimatized to Japanese environment, was, in fact, a new hybrid recently established in Japanese soil. Is it being rooted up, or trampled under foot? Will the emotionalism of self-preservation, national honor, and loyalty to the imperial line expressed in terms of faith in the army that had won recognition for Japan prevail? Is Japan inevitably committed to militarism?

The best evidence available for a negative answer may be found in the opening paragraphs of an address to the Kyoto meeting of the Institute of Pacific Relations. It was delivered by Yosuke Matsuoka, formerly Vice-President of the South Manchuria Railway, and parliamentary counselor to the Foreign Office in the Seiyukai Cabinet of December, 1931—a very active assistant to Premier Inukai until the return from Paris of the Foreign Minister, Kenkichi Yoshizawa.

Speaking of internationalism in Manchuria and Mongolia, Mr. Matsuoka said:

The old conception of the state as an independent entity exclusively concerned with the pursuit of selfish national interest is no longer accepted as satisfactory by a world in which the interdependence of peoples is increasingly more obvious; rather it is conceived of now as a free unit in an essentially co-operative society of nations, just as the individual man is the unit in society. We no longer apply a perverted Darwinism to the life of nations and conceive of international politics as a perpetual struggle for existence, as in the life of the jungle. We recognize co-existence and co-operative life as inherent features of human society. The world's statesmen, who since the Great War have been seeking means by which lasting peace may be established, agree on certain fundamentals, amongst them:—that every race should be protected in its right to existence; that every race has a right to equal opportunity for its enjoyment of civilization; and that co-operation among nations is the best road to this desirable end.

As this consciousness of the rights of other nations grows, we see a

corresponding decline in the territorial ambitions which even recently were thought to be legitimate. While yet a long time may elapse before the spirit of racial self-determination, or non-determination, shall exercise its full force in international life, it is gratifying to observe the increasing tendency to recognize the right of all states to equal treatment in the family of nations.

From this it follows that the nation which should attempt to monopolize a superfluity of national resources of which the other nations stood in need would be open to condemnation from the international point of view. If the individual man is inalienably endowed with life, liberty, and the pursuit of happiness, it follows that the individual nation's right to exist is no less sacred. If this is admitted, it follows that each nation should make its surplus resources available for the needs of others. President Wilson, in his memorable message of 1917, said in effect that though economic equality was impossible, except through peaceful and co-operative development of the world's resources, yet every race had the right to be regarded on a plane of equality. Policies which propose to assure the economic and political existence of any nation by means of international reciprocity and mutual aid stand, therefore, on unassailable grounds of reason and right.

An outline of policy from another and perhaps more influential personage closely associated with the Seiyukai Cabinet (appointed December, 1931) is contained in a book called *Keizai Kokusaku No Teisho* ("Proposal for Japan's Readjustment") by Jotaro Yamamoto, formerly President of the South Manchuria Railway, who is spoken of by the Japanese press as "minister without portfolio."<sup>7</sup> The book is referred to as the "bible" of the Seiyukai party; it is a program for the way out of the economic depression which Japan has suffered since the World War and the great earthquake disaster. His book is popular because it offers a program which would put Japan upon a new foundation for prosperity and happiness; his thesis is the familiar one that the function of government is to insure the happiness of the people by satisfying their economic wants.<sup>8</sup> He advocates economies in government—elimination of overlapping departments and needless red tape involving an unnecessarily numerous personnel; reforms in education for di-

7. The innovation of a "minister without portfolio" has not been allowed by the Privy Council. Too many such ministers might increase the influence of the active cabinet members in the Privy Council.

8. This book was carefully reviewed by K. K. Kawakami in the *Sunday New York Times Book Review*, June 7, 1931.

versification of training; combination of army and navy into a Department of National Defense which should be substantially reduced since Japan is no longer goaded by inequitable treaties or menaced by hostile powers. He would also economize in the diplomatic service; he sees little advantage in sitting at the Council table discussing the Polish Corridor or the Silesian dispute; in his opinion Japan is taking too much interest in the League of Nations, which is essentially Europe's business. Constructively, he would have Japanese agriculture developed scientifically, but his most effective solution lies in his program for the intensive industrialization of Japan. For this reason he pictures the natural resources of Manchuria as entirely sufficient—food, raw materials, iron, coal, oil. He is frankly a protectionist. It all sounds familiar; it sounds like a Japanese adaptation of their conception of the principles of the policy of the United States. The program does not sound militaristic, nor does it sound very coöperative. It is a program for self-sufficiency—the present-day counterpart of the isolationist policy of eighteenth-century Japan. It may be adopted when the present (1932) demonstration of militarism shall have been discredited and the Military brought under control—or at least coordinated with the Civil Government—and when men of constructive administrative ability shall again be at the helm. Then the dictatorship of a military clique will have been superseded by a Civil Government effective and supreme.

It is almost inevitable that the policy of a reinstated civil rule shall be coöperative. Japan needs trade with the Chinese as well as raw materials from Manchuria; moreover, Japanese goods are necessary to the Chinese; some working arrangement whereby each gets what it wants and needs is the only possible settlement. Any other policy on the part of Japan, any policy which ignores Chinese identity and Chinese needs, will result in boycotts and hostilities which in the end will deprive Japan of her cherished gains. The actual needs of both spell coöperation in some form whether they will or not. The geographic and economic position of Japan in relation to Manchuria also makes coöperation essential for Japan's very existence: Japan, for instance, has not the capital with which to develop Man-

churia single-handed, nor has she the population suited to life there; the Open Door is as advantageous to Japan's prosperity as it is fair to other nations; the population is and will remain Chinese. The Japanese Military may be useful as disciplinarians, but they have not the experience, judgment, or training necessary for peaceful administration; administration is a business matter demanding an expert, especially trained personnel. "The exigencies of the situation" is Japan's excuse for measures opposed by the Chinese, but the "exigencies of the situation" may be a two-edged sword, which will demand coöperative endeavor. It seems inevitable, therefore, that we should conclude that the Japanese must ultimately—if not under the Seiyukai administration—be coöperative with the Chinese in China, just as Mr. Matsuoka has demanded that the world should be with them. Coöperation from the world is necessary for Japanese existence; coöperation by Japan is equally necessary for her own existence, for Chinese stability, and for world peace.

A visitor to Manchuria must regretfully admit that not all the minor agents of Japanese administrations in the past have been as fair, generous, or coöperative as the remarkable intelligentsia at home. In contending for the recognition of the need of coöperation with Japan, the Japanese in Japan need to see to it that coöperation is exercised by subordinates, and by the army.

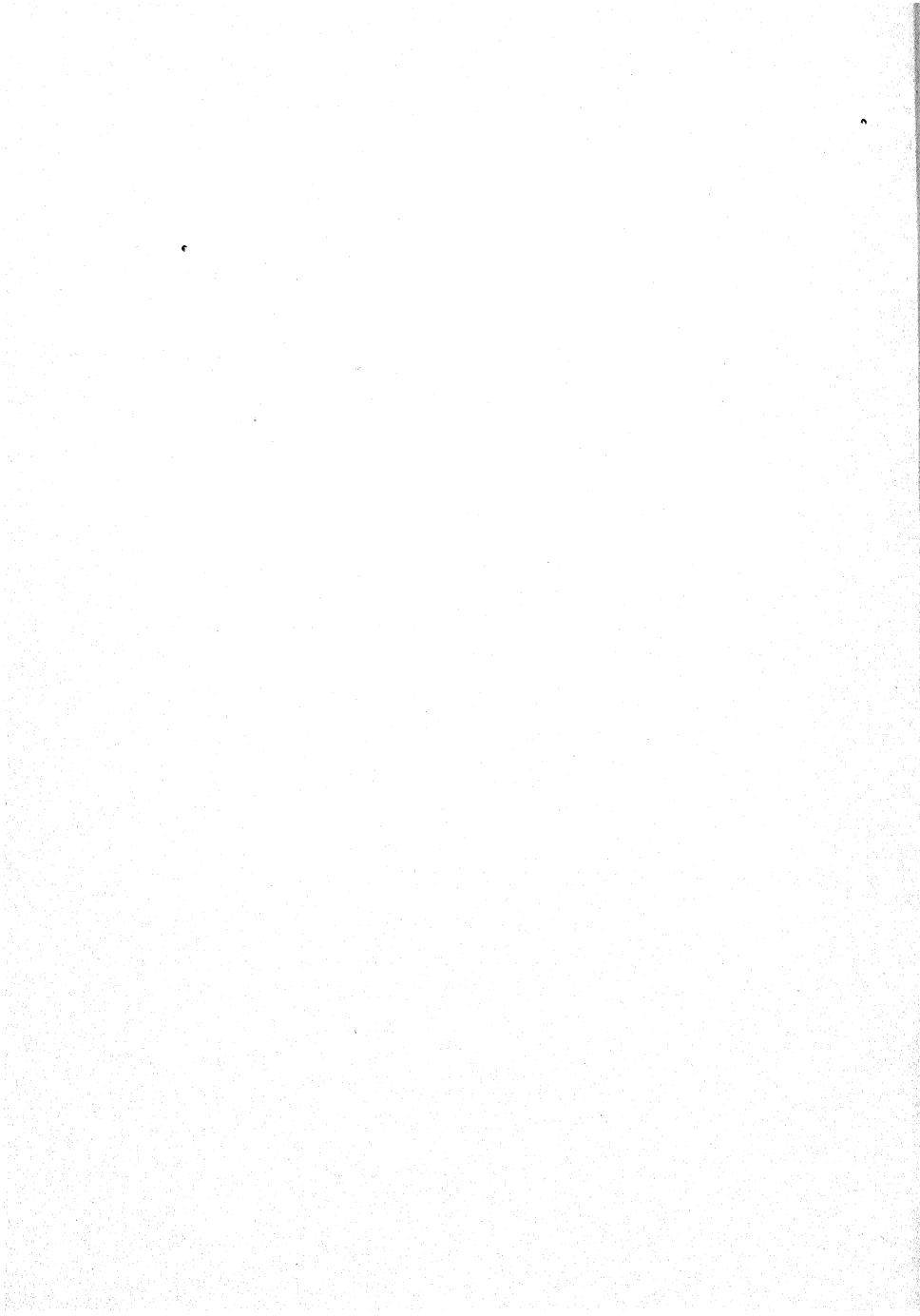
In the end the finding of a solution for perplexing situations in China and in Manchuria must involve assisting China to the realization of her ambition to become a stable, peaceful, prosperous China; this point was always stressed by Baron Shidehara. It is concomitant to the opportunity which Japan demands for herself, namely that she be allowed to share in such resources—wherever they may be—as she needs for her own industrial self-sufficiency. Moreover, Chinese stability is the *sine qua non* of stability in Manchuria. The will-to-coöperate on the part of both China and Japan is the essential factor. The purpose to maintain just relationships will inevitably involve a scientific approach to economic and administrative problems in China. Solution cannot be found in the imperialism and an-

archy of the past, nor in China and Japan pursuing ways apart; a new approach is essential. If a working basis can be found, principles defined, or practices initiated, they will have to solve fundamental problems of security, national self-respect, and economic prosperity for both nations.

The need is for creative thinking and coöperative endeavor on the part of all nations. Japan, in spite of her military tradition and the general belief that she is what she is, and can remain and become what she will by the use of the techniques that the world has long understood, this Japan is in need of coöperation for her very existence. China is in need of coöperation—not on her own terms, nor on the terms of any other nationality, but through the means of a “go-between” with a scientific approach and the will to establish “right relationships.”

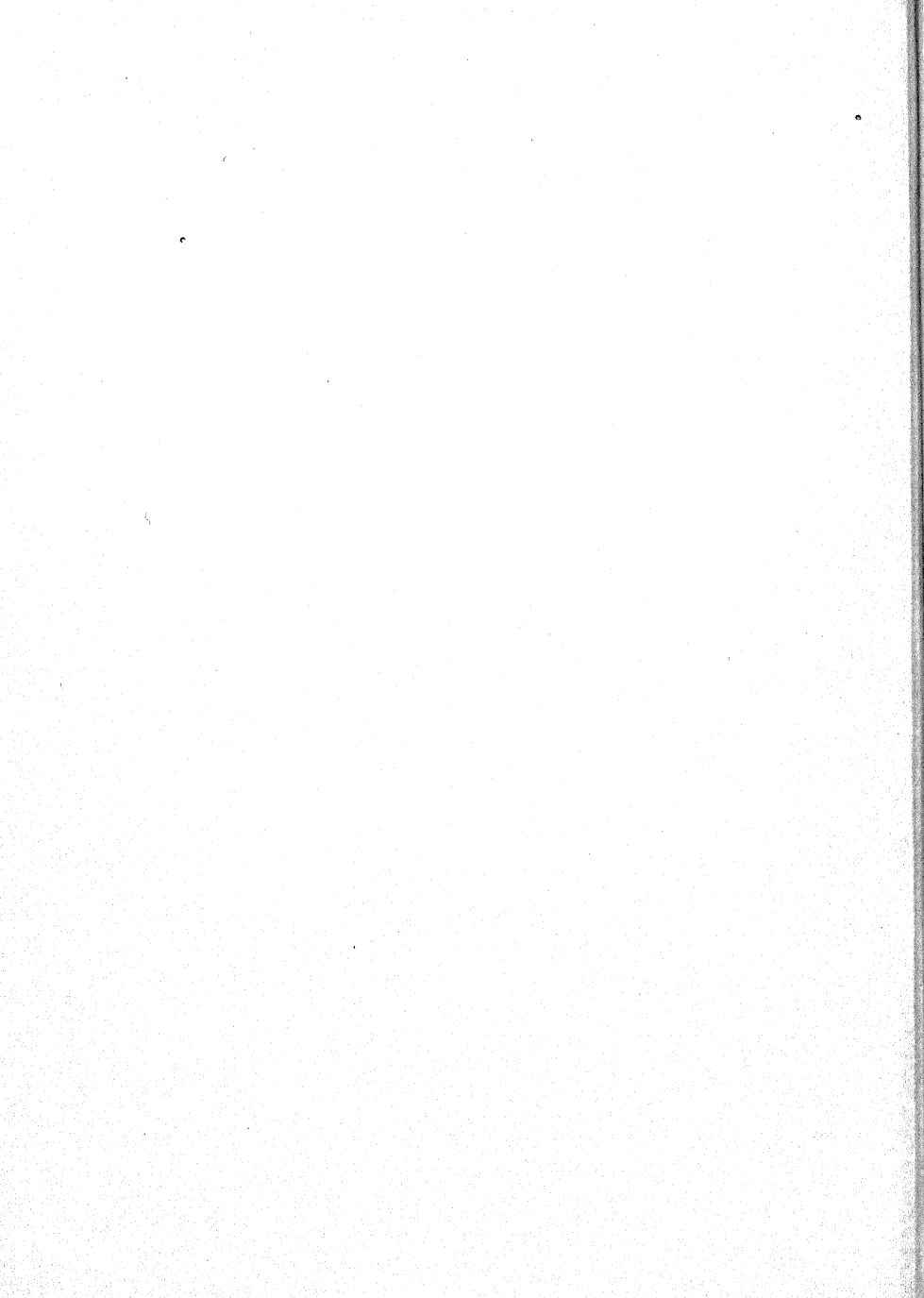
“It is pre-eminently a human issue, and unless man rises above national egoism or realizes that each nation’s ultimate good lies in harmonious coöperation with the rest of mankind no satisfactory solution will be forthcoming.”<sup>9</sup>

9. Nitobé, *op. cit.*, p. 45.



V

IN SUMMARY AND IN CONCLUSION



## IN SUMMARY AND IN CONCLUSION

WITHOUT doubt some *deus ex machina* is necessary in eastern Asia.

Any answer to Chinese problems must fit Chinese circumstance. Adjustment of mutual jealousies, restatement of treaty rights, due recognition of Chinese sovereignty, and maintenance of the stability essential to economic opportunity for all parties concerned, can only be accomplished through some mechanism suited to China. The Chinese have always employed a go-between for the adjustment of their private affairs, and for the success of their business negotiations; they need one now for their public affairs. Already we have noted that early in the history of intercourse with foreigners in Canton, the Chinese had their Co-Hongs to guarantee the honesty of the foreign trader; later the foreign traders had compradors to guarantee the reliability of their Chinese customers. It should be possible to recognize Chinese practice and work out China's problems in ways related to Chinese custom, and especially in relation to the exigencies of the present governmental limitations which are inherent in the "Period of Tutelage" in which China finds herself. The Co-Hongs have gone and the compradors are being replaced by expert business managers; Chinese intelligentsia recognize the value of expert training and advice in business and governmental affairs; but the age-old practice of using a go-between still prevails; their appeal to the Council of the League of Nations was a logical action for them to have taken.

Moreover, it is folly for the Chinese to suppose that they can work single-handed against the whole world. Relationships within China concern the nationals, and consequently the nations, that are party to them; adjustment, therefore, is an international matter, even if the Chinese have the greatest interest in it. As a practical problem, then, it seems essential that there should be a go-between, qualified and recognized, as the agent through whom adjustments may be recommended and negotiated. Up to the present negotiations have been as numerous

as the nations concerned, and each has held back lest another get an advantage. Joint endeavor would of necessity eliminate this kind of bargaining and the national jealousies incident to it; it should also necessitate the finding of a common ground, the impartial statement of the case, which is prerequisite to any solution. If a go-between is accepted jointly by the Chinese and others, there can be no reflection upon Chinese sovereignty; their sovereignty would have the same status in relation to the go-between as would the sovereignty of the other parties to the coöperative undertaking.

The failure of the Council of the League, in the autumn of 1931, to meet the high hopes that were placed in it, may be so disappointing as to discredit this suggestion for the time being. If we are honest we must recognize that that failure was due to political ambitions and economic complications of member states; it was also due to the lack of experience on the part of everybody, or their lack of real confidence, in coöperation. Perhaps the lack of active coöperation by the United States had a great deal to do with it, for in the absence of support by the United States, the Council showed itself nerveless.

In a world made new by scientific invention, in a world whose health and material well-being is greatly enhanced through benefits derived from scientific thought and discovery, there is yet another field for conquest by objective, fact-finding endeavor. It is the world of political, national, economic relationships, which involve the well-being of human society. The fact is that coöperative endeavor in relation to China is yet to be tried. The efforts of the Council in 1931 were a beginning, even though practical results were disappointing. Real coöperative endeavor may be more possible because of the obvious lessons learned from this experience. Those lessons are undoubtedly too numerous and too controversial to be discussed here. Nevertheless there are two which are so fundamental as to be beyond dispute. They need only to be stated. One is that conditions in Asia are not European; they are Asiatic and must be dealt with as such. The other is that solution is possible only through the coöperation of all parties concerned, including the United States.

The old order from which the Chinese would free themselves cannot be removed for them, but only by joint effort with them. Old treaties guaranteed equal opportunities to the nations in China; new arrangements should guarantee equal opportunity to China among the nations. That, however, involves her willingness and her ability to take responsibility. Ultimate success will rest upon her consent to coöperate even if she does not immediately get all she hopes for or demands. Successful readjustment in Chinese international relations also rests upon Japanese loyalty to the League Covenant, when the League comes to operate in Asia; and to an acceptance of such idealism as was presented to the opening session of the Japanese Diet, January 23, 1931, by Baron Shidehara, then Acting Prime Minister. He said:

Only by mutual co-operation in endeavor to discover the true bases of their common welfare, combined with generous and sympathetic understanding of each other's points of view, can all issues between two nations be satisfactorily set at rest and the true interests of both parties promoted.

Ultimate success in settling conflicting interests in China, however, cannot be determined alone within the confines of Asia. All nations whose nationals are in China are concerned over the principles involved when any rivalries in China revolve around Chinese sovereignty and Chinese efforts for the abolition of extraterritoriality; they are also involved when there is any question of violation of the Nine Power Treaty or the Kellogg-Briand Pact, to which they are party. The coöperation of western nations with China, or with Japan, or with China and Japan, in the Sino-Japanese rivalries, in view of these facts, is as important and as necessary as the coöperation between China and Japan themselves. In the end successful adjustment rests upon the mutual confidence of all the nations, and upon their will-to-coöperate.

The way out suggested in our discussion of business contractual relationships in China, which should make possible the maintenance of units of stability essential to the economic life which China possesses, was but an emphasis upon a method the

Chinese had already (1930-31) initiated. Their attempt to get advice and assistance from the League Secretariat for the reconstruction of their finances and communications, and for dealing with their problems of health and education, was a beginning. China needs more than that. Temporarily, during the period of her internal reconstruction, she needs the continuance of special areas which shall provide, both for Chinese and foreigners, adequate security from the irregularities of the present uncertain Chinese rule. She needs also a guaranty for the fair dealing and just behavior of foreigners within these areas. All special areas should, of course, recognize Chinese sovereignty, as is due, until that sovereignty is a fact within China itself. Applying the same principle of international coöperation, it should be possible to work for equable readjustment of conditions, and redefinition or clarification of rights, within Manchuria.<sup>1</sup> If the Japanese are sincere in their professions for fairness of opportunity without territorial or political ambitions, they can best prove it by resting their cause on its merits, and leaving the settlement of specific controversies to international expert commissions. If the Chinese recognize the vastness of their problems and employ experts for the initial and temporary management of one problem after another—communications, finance, foreign settlements, treaty rights, or other special points in controversy in Manchuria—then it may indeed be possible to hope for an early realization of their ambition for national prosperity and national honor.

The ultimate success of such a coöperative program rests on the willingness of the Chinese to recognize the limitations imposed upon them by present conditions within their vast depleted and disorganized body politic. It rests equally upon the genuine respect which the go-betweens, and other party or parties to the relationships, shall give to the sincere endeavor of the Chinese to win recognition and equal treatment among nations. Finally, it rests upon the attitude of the Japanese. The Japanese, if they recover from what appears to be military fanaticism, and recognize their own need of coöperation from the world for their own development, must know that the

1. See above, p. 126, n. 9.

recognition of agencies for such coöperation, created for the assistance of China, could involve no disrespect to them, nor bring harm to them if their cause is just.

Through military prowess Japan, an Asiatic nation, found her place in the League of Nations in Europe. Through the invitation of China the League is in Asia. The League, its members, its commissions, the nations of the world, are facing a supreme challenge.

In the last century Japan learned from the West that effective force demands recognition. Should China decide to turn backward and imitate; should she desert the twentieth-century policy—the ideal of scientific management only recently initiated and operative through the League of Nations; should she decide, because of disillusionment, to vindicate her sovereignty by force, untold disaster to China and to the whole world must follow. If the perpetuation of treaties as they stand goads the Chinese to desperate means for the annulment of special privileges and monopoly rights of the foreigners, if the negation of treaties means so serious a derangement of business as to lead other nations to demonstrations of protest like that of the Japanese in Manchuria, then if each nation continues to defend its rights and dignity by further use of force, barbarism and destruction will take the place of civilization and constructive measures for the well-being of human society.

In conclusion we may say, in fact we must say, exactly what we should have said without the Manchurian crisis of the autumn of 1931. That series of events only accentuated the situation, and attracted world attention to a problem that has become of major concern in international affairs in Asia. Further catastrophe may involve the United States and Europe as well. In the whole matter four primary considerations are involved: the abolition of extraterritoriality, the recognition of Chinese sovereignty, the safeguarding of business relationships, and the guaranteeing to Japan of the opportunities and resources necessary to her economic well-being. However complicated and difficult the problem may become, the solution will inevitably lie in a coöperation which shall aim at the fullest realization of all these objectives. Any one-sided settlement can be but tem-

porary. The necessary adjustments and agreements, and the machinery, administrative or otherwise, for carrying them through, can be evolved only when every government is willing to recognize that its objective is not the only one to be considered.

If there is such a thing as "creative evolution," or the conscious direction by mankind of their destiny, now is undoubtedly the time for nations and peoples to use their intelligence and not repeat the mistakes of the past. The same coöperation which is demanded in Asia is equally necessary in Europe: it is as essential to the financial problems of Europe as to the adjustment of treaty rights in China. France demands guaranties for her security, Germany needs assistance for the rehabilitation of her finances; the lack of coöperation is tying up the economic life of all western nations. In Asia, China has insisted upon her rights and her sovereignty, Japan upon her treaty rights and her dignity; each has insisted upon her will to the disadvantage of the other. It is essential to the peace of the world that both China and Japan find a working basis whereby the dignity and prosperity of each may be assured; it is essential that France and Germany find a similar *modus operandi*. Every nation talks of coöperation, but in none does there seem to be genuine confidence in it or willingness to try it. The challenge of China to the world, the challenge of China and Japan to each other, is the same challenge that France and Germany are to each other and to the whole world in the contemporary *impasse*. Just one thing is needed—the *deus ex machina*—and it is needed throughout the world as well as in Asia. The need is the will-to-coöperate.

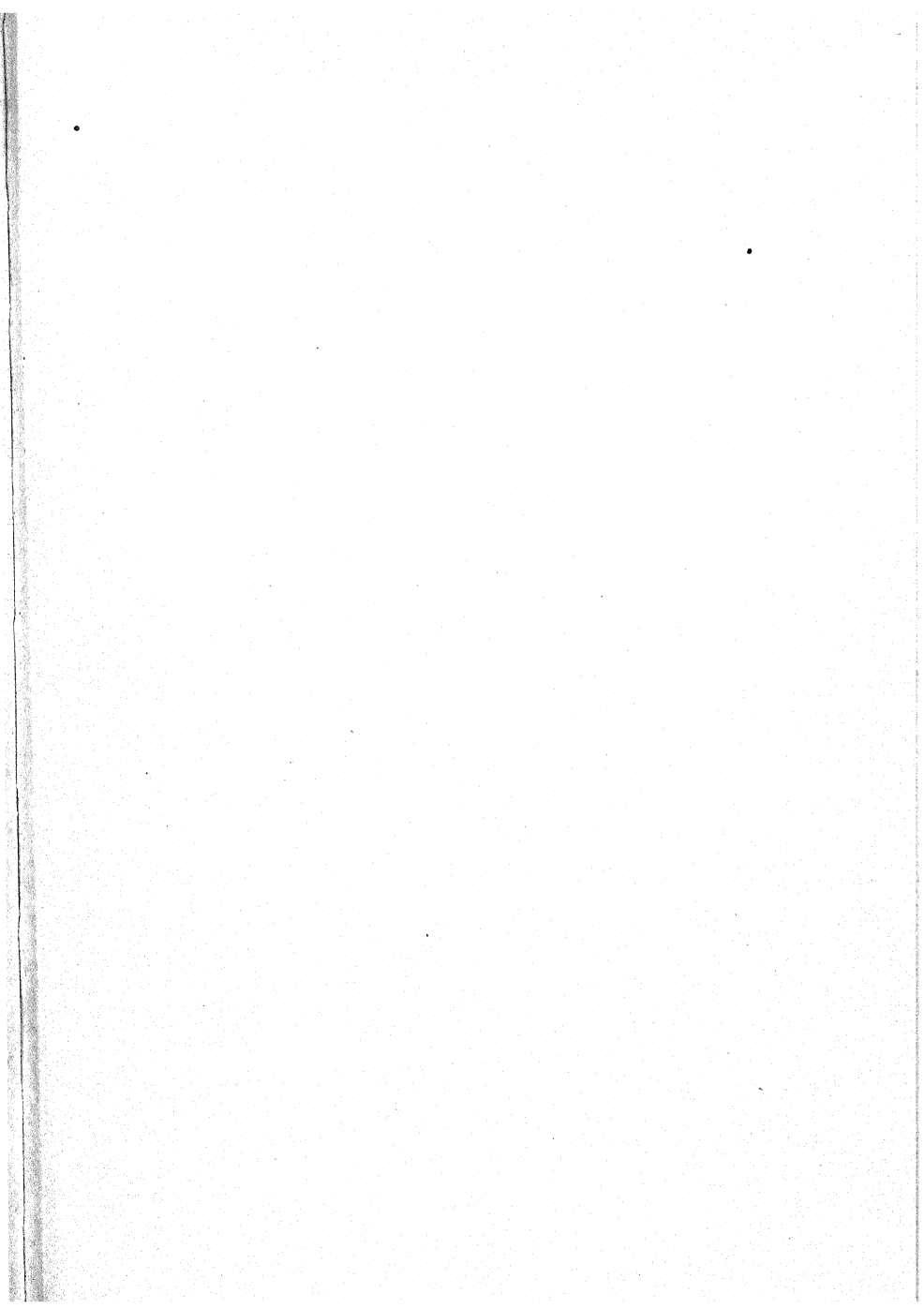
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